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# CRIMINALS AND CRIME





# CRIMINALS AND CRIME:

SOME FACTS AND  
SUGGESTIONS

BY

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## PREFACE

THAT this book has taken shape as a popular treatise is a departure from my original plan and purpose. But I do not regret the change. For apart from the main reason for it, explained in these pages, it has been urged upon me by "men of light and leading" that what is now needed is to convince the general public that the reforms here advocated are both important and practicable.

Some of the most influential Judges of the High Court have spoken to me in this sense. On the last occasion on which I had the privilege of discussing the matter with Mr. Justice Wills—it was before his retirement—he renewed his assurances of sympathy, but raised the objection that the public were not ready to sanction the indefinitely prolonged imprisonment of offenders. I urged in reply that the public would fall into line, if the Judges would adopt Sir James Fitz-James Stephen's proposal that a criminal's fate should be determined only after a formal public trial on the issue of his being a "professional."

An interruption brought our conversation abruptly to a close, and Sir Alfred said he would consider the matter and write to me. A letter received a few weeks afterwards authorised me to express his approval of the scheme; and this has been confirmed by a letter with which I have been favoured while these pages have been passing through the press.

It is to the public therefore that this volume is addressed. For if the public became alive to the fact that all the principal offences against property are the work of small bands of professional criminals, and that the professional criminal is the creature of our punishment-of-crime system, we should soon have a popular outcry in favour of the reforms here advocated.

A "good burglar," for example (to use a phrase by which the Police designate the sort of criminal who achieves success in that branch of the profession), must be a man of nerve and skill and resource. And his appreciation of a life of adventure and luxurious idleness far outweighs his fear of an occasional term of penal seclusion. For he counts upon having "a good run" during each period of misused liberty; and as a matter of fact he will probably have a great many cases to his credit before he is caught. But burglars of this type are not numerous; and it is due to

our releasing them in relays, under the punishment-of-crime system, that the business is still kept going.

The knowledge of facts such as these cannot fail to create a healthy public opinion that may serve to counteract the agitation so persistently maintained by the professional humanitarians on behalf of the professional criminals.

It is with the cordial assent of my friend Sir James Knowles that, in writing this book, I have made use of my *Nineteenth Century* articles on crime.

R. A.



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# CRIMINALS AND CRIME

## CHAPTER I

WE justly deplore the barbarity with which past generations treated their criminals. The elaborate folly of our present methods will excite the wonder of generations yet to come. Barbarous the old system certainly was, but there was a practical efficacy about it which none could ignore. In those rough days a convicted criminal, if denied "a place of repentance," was also denied the opportunity of committing further crimes. And when transportation superseded the gallows the same result was in great measure assured; for the cases were few where criminals once shipped to our penal colonies ever reappeared in their old haunts. So far as this country was concerned, their deportation practically closed their career.

In referring to these discarded methods for disposing of criminals my purpose is merely to emphasise the fact that their abolition deprived

the community of an effectual means for dealing with men who make crime their profession. For a time, no doubt, penal servitude afforded a reasonably adequate alternative. But at the present day, so far as crimes against property are concerned, prolonged terms of penal servitude are as obsolete as transportation and the gallows. We are thus face to face with a difficulty which has hitherto escaped attention, albeit it claims the most earnest and careful consideration.

It is idle to attempt to burke this discussion by an appeal to the gratifying fact that crimes and criminals are decreasing in number. That such is indeed the fact need not be asserted, for everybody acknowledges it, and the judicial statistics afford indisputable proof of its truth. But it is no less a fact, although most people ignore it, that while crime in general is diminishing, *professional* crime is on the increase. And this is precisely the kind of crime which is the most serious danger to the community, and the severest tax upon police administration. Great crimes are seldom "undetected"; but of course it is one thing to discover the author of a crime, and a different matter altogether to obtain legal evidence of his guilt. And in this country the evidence must be available when an accused person is placed under arrest. Not so in countries

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where the police are armed with large despotic powers which enable them to seize a criminal without any evidence at all, and to build up the case against him at leisure, extracting the needed proofs, it may be, from his own unwilling lips.

The peril to the community caused by common crimes, as distinguished from crimes of the first magnitude, will be obvious to the thoughtful. For example, a man who murders his own wife is not necessarily a terror to the wives of other men. A man who kills his personal enemy excites no dread in the breast of strangers. Or again, take a notorious case of a different kind, "the Whitechapel murders" of the autumn of 1888. At that time the sensation-mongers of the newspaper press fostered the belief that life in London was no longer safe, and that no woman ought to venture abroad in the streets after nightfall. And one enterprising journalist went so far as to impersonate the cause of all this terror as "Jack the Ripper," a name by which he will probably go down to history. But no amount of silly hysterics could alter the fact that these crimes were a cause of danger only to a particular section of a small and definite class of women, in a limited district of the East End; and that the inhabitants of the metropolis generally were just

as secure during the weeks the fiend was on the prowl, as they were before the mania seized him, or after he had been safely caged in an asylum.

In contrast with this, take the case of a commonplace burglary. Never a night passes that some crime of this kind is not committed in the metropolis. No one can be certain, as he shuts his door and lies down to sleep, that the sanctity of his home will not be thus outraged before morning. And in every instance there is a real element of danger to the occupants, for the burglar is generally ready to resort to violence if disturbed in the commission of his crime.

But this is a digression. What concerns us here is the startling fact, that while in recent years there has been a marked decrease in crime, crimes of the kind which every expert knows to be the work of professionals have steadily increased. But is the fact as stated? The criminal statistics of the metropolis afford the best and safest test by which to settle the question. The "judicial statistics" would be less suitable for the purpose, because they deal with the country as a whole, whereas professional crime is unknown save in urban populations. Let us then appeal to the statistics.

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First, then, as to the extent to which crimes against property have decreased. Let us, for example, compare the statistics for 1905, the last year for which the tables have been published, with those for 1868, the year after that in which transportation was abandoned. In 1868 the felonies relating to property numbered 22,083, whereas in 1905 the felonies of the same class were only 18,515. And yet during these thirty-six years the population of the metropolis was more than doubled.<sup>1</sup> In 1868 the proportion of such crimes to each 1000 of the population was 6·295, whereas in 1905 it was only 2·613.

Professional crime has several phases, but the burglar is essentially a professional, and his crimes always appeal to the popular imagination ; and the distinction between the crime of burglary and that of housebreaking or breaking into a shop is somewhat technical, and in fact they are regarded by the police as falling within the same category. For our present purpose, therefore, these offences may be grouped together ; and the following table gives at a glance

I. The average annual number of such crimes committed in the metropolis in each of the seven quinquennial periods from 1869 to 1903 ; and

<sup>1</sup> The estimated population of the metropolitan police district was 3,507,828 in 1868, and in 1905 it was 7,086,638.



II. The average annual proportion of felonies relating to property to each 1000 of the population in the same periods.

Period	I.	II.
1869-1873	528.8	5.018
1874-1878	982.4	4.493
1879-1883	1,702.1	4.856
1884-1888	2,095	3.823
1889-1893	2,410	3.249
1894-1898	2,532.8	2.755
1899-1903	2,898.2	2.561

These figures should put an end to any silly dreams about the disappearance of the professional burglar. In the year 1869 the number of felonies relating to property was 21,529, and the recorded offences in the three categories above specified was 559. The corresponding figures for 1905 were 18,515 and 3055. If the offences against property had increased in the same ratio as the population of the metropolis, the number of felonies relating to property in 1905 would have been 42,817 instead of 18,515; and if the burglaries, &c., had decreased in the same ratio as other felonies relating to property, there would in 1905 have been 242 instead of 3055.

A further analysis of the statistics would establish that what is true in respect of offences of the burglary class is equally true as regards the other kinds of professional crime. The fact then is clear, as every expert is aware, that while

ordinary crimes against property are decreasing, those crimes which are the work of professionals are as definitely on the increase. The professional criminal is developing and becoming a serious public danger. And my next point is that, while crime in general is an inefaceable blot upon our civilisation, professional crime is preventable, and might be suppressed. This is not the dream of a visionary, but the intelligent belief of those who have practical knowledge of the problem involved.

Professional criminals are of two classes. There are those who are so utterly weak or so hopelessly wicked that they cannot abstain from crime, and there are others who pursue a career of crime deliberately, with full appreciation of its risks. In the case of both classes our present methods are singularly unintelligent; and as regards the former class, they are not only unintelligent but harsh. Harsh, I say, because so many of these men are just what society has made them. We permit hereditary criminals, men who are criminals both by nature and by habit, to beget children to follow in their steps. We allow such children to be reared in the midst of surroundings that would be morally fatal even to the offspring of the worthiest and best of men. And when we reap what we have sown, and these wretched creatures bring themselves within the criminal law, we pride

ourselves upon having an efficient police to trap them, and well-ordered gaols in which to cage them; and any unexhausted reserve of our Pecksniffian philosophy expends itself in the compilation of judicial statistics of their crimes.

And in the case of those who are criminals by deliberate choice our present methods are still more indefensible. The true professional is an advanced disciple of Hobbes. He is not embarrassed by either twinges of conscience or a sense of shame. And for such a man a criminal career is a life of adventure, such as will compare favourably with most other kinds of sport. A friend of mine, the minister of a West End chapel in London, tells how, in his last visit to America, he preached in one of the larger gaols, and after the service visited some of the prisoners in their cells. One case interested him especially, a man of good education and address, and seemingly of abilities fitted to command success in the world. My friend gave vent to his sincere distress at finding such a man in such a position, and was going on to "improve the occasion," when the prisoner cut in with the remark that he believed in England we were fond of fox-hunting. My friend, regarding it as a broad hint to change the subject, assented. "And may I ask," said his companion, "when a man gets a fall does he give

up hunting?" And on getting the only possible answer to such a question, he added, "I have had a bad fall, and no mistake, but I count on better luck another time."

This case is thoroughly typical. The true professional is not a weak creature who yields to uncontrollable impulse. Living a life of adventure, and having a soul above working for his living, he pursues a life of crime with a full appreciation of its risks. Change those risks to certainties, and you at once supply a motive adequate to influence his course. If every fox-hunter ended by breaking his neck, fox-hunting would be shunned, save by a few desperate men; and the same would be true of professional crime of this character if it always ended in disaster.

Here the humanity-mongers will raise an outcry at once. The humanity-mongers are so lavish of their pity for the criminals that they have none left for their victims; none for outraged society; none for honest and peaceful citizens impoverished by their crimes; none for the children they beget and rear to follow in their evil ways. "But," they will exclaim, "you can't make men moral by Act of Parliament." This must mean either that outward restraints will not change men's hearts, or else that they avail nothing to control their actions. In the one view it is a mere platitude;

in the other it is a transparent fallacy. Where is the man who is governed altogether and only by principle? No one is uninfluenced by those restraints and incentives which serve to shape and guide the course of common men. "Lead us not into temptation" is a prayer that none may safely ignore. "Morality by Act of Parliament" is a great principle which enters into the very highest religious teaching, and it is supreme in the practical ethics of ordinary life. The whole criminal law bears testimony to its truth.

But, we shall be told again, this assumes that severity in punishment will avail to check crime, whereas experience shows that crime has decreased in the very period during which leniency in punishment has prevailed. Now, first, there is a fallacy in this. *Post hoc propter hoc* is bad logic. It is because we have fewer criminals that lighter sentences have become possible. And the diminution in the number of criminals has been due to causes that are not far to seek. If we go back a single generation, our prisons were so administered that a term of imprisonment was an adequate training for a criminal career; and the prisoner on his discharge, finding no one to give him a helping hand, was all too likely to turn to crime. But to-day prisons are no longer nurseries of crime; and the develop-

ment of practical philanthropy makes it possible for every offender, on leaving prison, to return to honest labour. More than this, a generation ago the mass of the lower classes were entirely illiterate, and their surroundings were so squalid and wretched that a lapse towards crime was easy. To-day this is true only of the lowest strata of the population. It is to reforms of this kind, which have improved the condition and raised the tone of the humbler classes of the community, that the decrease in crime is due, and not to greater leniency in punishment.

The objection, moreover, is not merely fallacious; it is irrelevant. For my purpose is not at all to advocate an unreasoning return to severity of punishment. All I wish to plead for is the introduction into our methods of dealing with criminals of a little present-day intelligence and common sense, now singularly lacking. Major Arthur Griffiths, one of our best authorities in such matters, has declared that our prison population may be classed in two grand divisions, those offenders who ought never to have been sent to prison at all, and those who ought never to be released. Deduct from this statement even more than the usual discount needed to reduce any epigram of the kind to the level of fact,

and there remains a truth which claims the most earnest consideration.

Why do we imprison our criminals? Those whose breath is not quite taken away by a question they will deem so extraordinary will promptly give the stock reply: first to punish, secondly to deter, thirdly to reform. This third point may here be dismissed with the remark that if the State is really responsible to reform its criminals its methods are singularly ill-adapted to the purpose. And the State is no more bound to *punish* criminals than to reform them. Every mitigation of the criminal law, as, for example, in the case of first offenders, is a revolt against the ignorance of the past in this respect. The sentence of a criminal court is not intended to anticipate the judgment of the Great Assize. Sir John Bridge once said to me—and there were few more enlightened criminal judges even on the bench of the High Court—“I have nothing to do with punishing crime; that rests with a higher Power. My business is to protect the community.” Punishment is merely a means to an end, namely the safeguarding the interests of the community; and therefore, if those interests can be best served by letting an offender go unpunished, as *ex. gr.* in the case of youthful offenders, no sentence is imposed.

But, it will be said, it is necessary to punish criminals in order to deter the lawless and the weak from crime. True, and I seize upon the threefold admission this implies : first, that punishment is only a means to an end, namely the protection of society ; second, that it does in fact deter, and therefore the "morality by Act of Parliament" argument is given up ; and third, that if the punishment imposed be inadequate to deter, it fails of its main purpose. But here the theoretical and the practical views of the question are utterly at variance. The doctrinaire penologist rises from the study of the statistics jubilant at the wisdom and success of our present methods : those who have practical knowledge of criminals, while recognising to the full all that is admirable in these methods, are distressed and amazed at their folly.

Let us test them as applied to a new community, formed, let us suppose, by a "Pilgrim Fathers' exodus" or a "Boer trek." Confidence reigns in the new society. Every man leaves his door upon the latch, for no one dreams of disturbing his neighbour. But in course of time, when hundreds have increased to thousands, and the village has become a town, these good people are startled by the discovery that they have thieves in their midst. Their first care is to watch for



the offenders, and trap them. Their next thought is only to reclaim them, and no effort is spared to attain that end. But as years go by the fact becomes patent that there are certain black sheep in the flock, men who have deliberately chosen a life of crime. The community is being preyed upon by a gang of habitual criminals. The members of the gang are known of course; for habitual criminals are always known. But the question is, what is to be done with them?

Unsophisticated people might suggest that getting rid of the criminals would be the obvious solution of the difficulty. But the authorities are much too "enlightened" to adopt such a measure. Statistics are prepared which prove conclusively that the criminals are but a small proportion of the inhabitants, and that the property lost by their crimes bears but a small proportion to the wealth of the community. What could be more satisfactory? The next step is to organise a high-class Detective Police Force, whose duty it is to investigate every crime as it occurs, and to discover by which of the criminals on the list it has been committed. And each time a member of the gang is convicted, he is shut up for a limited term; and then, having of course been duly photographed and measured, he is turned out again to commit fresh crimes.

Meanwhile no citizen's property is safe. Doors can no longer be left on the latch. Not even a window can be left unbarred. The whole community is thus kept in a stage of siege.

Let no one turn away impatiently as though such folly would be impossible outside Earlswood or Bedlam. My parable describes the system on which our criminals are dealt with here in England to-day.

## CHAPTER II

To illustrate our present method of dealing with criminals, I will cite a case, taken at random from the newspapers.

“At the Clerkenwell Sessions yesterday some interesting references were made to the history of a desperate burglar, a man named Henry Marchant, aged forty-eight. The prisoner, under several *aliases*, has had a remarkably criminal career. In 1869 he had four months’ imprisonment for theft; in 1872, two months’; in 1874, twelve months’ for housebreaking; and in 1879, seven years’ penal servitude for larceny. Soon after his release on ticket-of-leave he was captured in the act of breaking into a house in Canning Town, when he tried to use a revolver on his captor. Liberated on heavy bail, he absconded, and when re-arrested at Manchester he was in possession of a revolver, a complete burglar’s outfit, numberless skeleton keys, and articles of jewellery, the proceeds of robberies in Manchester and Liverpool. He was tried at the Old Bailey, and sentenced to ten years’ penal servitude. By

good conduct in gaol he again obtained a remission of sentence, and in 1896 he was caught housebreaking at Bow, for which offence he was ordered twelve months' hard labour and sent back to complete his former sentence. When released again Scotland Yard circulated him as a determined and dangerous burglar, and observation was kept on his movements. He obtained employment and worked regularly for the greater part of the week, but carried out marauding expeditions on Saturday and Sunday evenings. On the evening of the 11th of February the police watched his house. His daughter was the first to arrive, and under her cloak some stolen property was found, but she only carried the goods by her father's directions. Marchant came along shortly after, when the officers closed on him and took him to the station. In his pocket he had a powerful jemmy and some skeleton keys, and in his room were found jewellery and other property stolen from the houses he was charged with having broken into."

One of the most eminent criminal Judges of our time has described the principle on which he dealt with a case of this kind. He first fixed upon a sentence adequate to the particular crime proved against the prisoner, and then he took account of any previous convictions, and made a

proportionate addition to the sentence. And the following quotation from *A History of the Criminal Law of England* will suffice to indicate that the principle above described is generally followed and acted on. In defending Judges from the charge of capriciousness in fixing sentences, Sir James Fitzjames Stephen says, "A person in the habit of being present at trials would, unless I am mistaken, soon discover that he could foretell pretty accurately the sentence which would be passed in any case which he had watched." Let us then apply the principle to Marchant's case. As the crime of which he was actually convicted was not a heinous one, twelve months' imprisonment would nowadays be considered an exemplary sentence. And if this term were increased fivefold on account of the previous convictions proved against the prisoner, every fair man would admit that the Judge exercised an admirable discretion under the system of punishments now in vogue. And in fact the sentence imposed upon him was five years' penal servitude; the Judge remarking that he was "a most dangerous man from whom the public must be protected."

My words here must not be taken as a veiled reflection upon the Judges. I recognise that the sentences they impose are in accordance with pre-

cedent, and with the system which now prevails. But in the case of a new community the folly of that system would appear almost inconceivable; and in a society like our own, its folly, though perhaps not so apparent, is still more gross. And Sir James Stephen's approval of it must not be inferred from his words above quoted. Those words have reference merely to the popular outcry about inequality of sentences. So far from approving of our present methods, that eminent jurist and judge advocated a return to the death penalty, not only for men who commit crimes of brutal violence, but also for offenders of another kind. Here are his words:—

“I would punish with death offences against property, only upon great deliberation, and when it was made to appear, by a formal public inquiry held after a conviction for an isolated offence, that the criminal really was an habitual, hardened, practically irreclaimable offender. . . . I suspect that a small number of executions . . . would do more to check crime than twenty times as many sentences of penal servitude.”<sup>1</sup>

My purpose in quoting this passage is merely to appeal to a witness of the highest authority in support of my indictment against our present methods of dealing with criminals of the class I

<sup>1</sup> Vol. i. p. 479.

have indicated. As a citizen I appeal to my fellow-citizens to bring their intelligence and common sense to bear upon the subject. Here is a man who has outlawed himself by deliberately and systematically following a criminal career. Sentences of imprisonment, varying in duration from two months to ten years, have had no effect whatever upon him. And now, when once again brought to justice, he is to be shut up for a few years more, and then again released to resume once more the practice of his profession. And this is not the decision of the inmates of a lunatic asylum; it represents the mature wisdom of the wisest race in the world!

The grounds of this decision are about as reasonable as the decision itself. They are, first, the statistics which prove that crime is decreasing, and secondly, regard for the criminal's sacred right to liberty. When this Empire of ours does go down, statistics and liberty will figure in its epitaph among the causes of its fall. I have already proved that while crime in general is decreasing, professional crime is seriously on the increase. And this increase is due mainly to the fact that, owing to the decrease in ordinary crime, sentences are now so lenient that they have ceased to be a terror to the professional. Could an intelligent public but see behind the

scenes, the prevailing sentiment against severe sentences would give place to a crusade against short sentences. If an Act were passed fixing twelve months' imprisonment as a minimum sentence, and consigning the worst sort of professional criminals to the gallows, it would, I believe, though ill advised, be better, and (I have no hesitation in adding) more humane, than our present methods. Very many offenders who are now committed to gaol would be dealt with in some other way; very many crimes into which criminals are betrayed by the present system would be avoided; and that most powerful incentive to crime, the teaching and example of the successful professionals, would be checked. And before the end of a single decade our prison population would be sensibly reduced. Lest any should dismiss this as a mere rhetorical flourish, I will quote one more extract from Sir James Fitzjames Stephen:—

“If [he says] society could make up its mind to the destruction of really bad offenders, they might, in a very few years, be made as rare as wolves; and that probably at the expense of a smaller sacrifice of life than is caused by many a shipwreck or colliery explosion.”

“Really bad offenders might in a few years be made as rare as wolves.” These are the calm,



deliberate words of one whose competency to speak on the subject no one will dispute. "But," the writer immediately adds, "for this purpose a change of public sentiment would be necessary, of which there are at present no signs." In a word, the proposed reform is impracticable. And as regards crimes against property, which alone I am dealing with here, I believe the desired results may be obtained without any such heroic measures as those above indicated. I do not desire to advocate any drastic changes which would distress the public conscience. On the contrary, I wish merely to give expression to the views of ordinary men; that is to say, of the bulk of the community. For in all matters of this kind we are coerced by minorities—aggressively active and tyrannical minorities. Just as, in the past, the political teetotallers have hindered reasonable reforms upon the drink question, so is it with the humanity-mongers in the sphere of penology. They are comparatively few in number, but their success as agitators is abnormal. Let any one propose, for example, that a "hooligan" shall receive the sort of punishment which at a public school would be meted out to the son of a duke for gross misconduct, and they will raise such an outcry as will stifle legislation to that end. Another minority, equally small in numbers,

will always protest against any amelioration of the prisoner's lot. And thus the pendulum is kept swinging, while an easy-going public remains perplexed and passive. To that public my appeal is addressed.

Sir James Stephen's scheme is based on the criminal's dread of the gallows; mine upon his love of liberty. My first point, then, is that in setting themselves to punish crime our criminal courts are pursuing a wrong system, a system unworthy of the age, a system begotten of mediæval superstition and ignorance. In former times the doctor set himself to cure disease. The result to the patient mattered little. Even if he died in the process, medical science scored a success; for, as the Irishman expressed it, "he died cured." In our day it is not the disease the physician considers so much as the patient. He carefully studies his constitution and medical history, and regulates his treatment accordingly. It is highly discreditable to the age that a like change of method has not yet been introduced in penology. By all means let a prisoner be tried only upon a definite charge, and without reference to his antecedents. But once he is convicted, let us have done with this stupid and ignorant system of measuring his sentence by his latest offence. If a man traps a fox in his "fowl-run" he does

not let it go again because, when caught, it had only killed a chicken or two. So here, the question should be, not what the prisoner did on the date specified in the indictment, but *what he is*.

Let there be a full and open inquiry as to his character and antecedents. The first question should be, Is he a citizen or an outlaw? If he be a citizen who has been betrayed into the commission of a crime by the pressure of circumstances, or some sudden temptation, then let "mercy rejoice against judgment," and let no effort be spared to bring about his restoration and reform. Under our present system men are sometimes sent to penal servitude, as habitual criminals, who might fitly be handed over to the care of some experienced philanthropist. If the convicted prisoner be a poor wretch who, begotten and born and bred in crime, has not the moral stamina to resist when opportunity for theft presents itself, then, instead of the brutality which now obtains of treating such an offender as a deliberate professional criminal of the other type, let him be sent to an asylum prison, where his life can be spent in useful labour, with every reasonable alleviation of his lot. But if it can be established that the offender is a criminal in the sense in which some men are artists or archi-

fects—in other words, that he is a criminal by profession, and habitually uses his liberty to prey upon the community—let him be deprived of the liberty he thus abuses.

True it is that our best Judges do at present, before sentencing a prisoner, investigate his antecedents. But under the system they administer the inquiry is necessarily perfunctory and inadequate, and often unfair to the accused; and, moreover, the result is used merely to guide them in apportioning the sentence to the crime charged in the indictment. Instead of springing a verbal statement upon a prisoner, at a time when he has but a poor chance of being able to refute it, his *dossier* in proper form should be officially supplied to the court, and a copy of it served upon himself. That *dossier* should then be made the basis, to quote Sir James Stephen's words, of "a formal public inquiry"; and by the result the fate of the prisoner should be decided.

This would involve radical changes in prison administration. For even where the law authorises penal servitude for life, the Judges will not impose, and public opinion will not tolerate, such sentences for ordinary crimes against property. But my proposal assumes that we shall cease to regard the *punishment* of the offender as a matter of primary importance. Let him suffer his term

of punishment as at present enforced, but let him afterwards pass under a discipline of a different character, and be allowed, conditionally of course upon good conduct and industry, every relaxation which may be found consistent with order in the prison and the safe custody of the prisoner.

It is a matter of opinion, no doubt, whether the fear of such a fate would avail to deter such men from crime. But it is a matter of fact and not of opinion, that if the foxes are trapped the hen-roosts will be safe. Under such a system the mass of the comparatively small band of known criminals who are responsible for almost all the more serious crimes against property would in a few years be either turned from their evil ways or safely caged in gaol.

And one more proposal alone is necessary to make such crimes as rare in our great centres of population as they are happily rare in rural districts. If we could abolish the market for stolen property, we should go far to put an end to stealing, and any change which makes the disposal of stolen property more difficult operates to check the commission of crime. To attain this happy result little is needed save to insist upon restitution in every case. And this can be achieved by means which, in principle at least, nine-tenths of the community would unreservedly approve. Let

the prisoner be required to disclose what he has done with his booty. And if he refuses, or fails to satisfy the court that it is out of his power to do so, let there be but one sentence—imprisonment for life.

Some people might think that a suitable punishment for an impenitent thief would be to crucify him. But torture can never be used without injury to the society which has recourse to it. Were it otherwise, no one who can gauge the bitter distress and misery which, day by day, these miscreants cause by their crimes, would hesitate to compel restitution, even by means of thumb-screws or the rack. The parable of the widow's mite may receive a new reading here. When the rich lose of their abundance, there is plenty of noise about it, albeit their cheque-books are at hand to make good their loss. But every day that passes humble folk are ruthlessly, heartlessly, robbed of all their little treasures, and no one seems to care. In a primitive state of society the thief would risk being hanged on the nearest tree. But civilisation teaches us to trust the State to do the hanging. And such is the manner in which the State discharges the duty that it is often easier to get the thief into the dock than to get his victim into the witness-box. The person who receives least consideration in

a criminal court is the unfortunate citizen who is aggrieved by the prisoner's crime.

I have said nothing here about the *élite* of the criminal profession. Such men live well. They can name their favourite wine, and they know a good cigar. A trip to Brighton is an ordinary incident in their easy lives; and a winter visit to Monte Carlo is nothing out of the way. They are responsible for the elaborate frauds, the great forgeries, and jewel larcenies, and bank robberies which now and then startle the public. All I have urged applies to them, of course, with special emphasis. But I have purposely based my argument upon ordinary types, and cases such as are of daily occurrence.

Nor have I embarrassed my arguments by discussing the vexed question of the inequality of sentences. In recent years there have been men in judicial positions who have openly repudiated the Prevention of Crimes Act, and the code of which it is a part; thus vying with the criminals they have sentenced in their contempt for the laws of their country. And from time to time public indignation is aroused by seeming lenity in the penalties imposed upon bad offenders. But these are mere eccentricities and blots upon our system of punishing crime; and my object has been to attack the system itself. I impugn

it as being false in principle and mischievous in practice.

The distinguished jurist I have quoted lays stress upon the importance of fostering public indignation against heinous crimes; but all such wholesome sentiment is now discouraged by the action of our criminal courts. The law is daily brought into contempt with those to whom it ought to be a terror; and the community is taught to look on the criminal as an object, not of reprobation, but only of pity. In the case of some offenders who, under our present methods, are consigned to prison, the pity is well bestowed; but in the case of not a few, an agitation to lynch the convict would betoken a healthier state of public opinion.

I am not alluding to crimes in which the thief resorts to acts of violence. Of course my remark applies to such. But here I am dealing only with offences against property. And I venture the opinion that when it can be proved that men, acting under no pressure of want, or excitement of passion, calmly, deliberately, and with great premeditation, plan and perpetrate crimes of this character, the gallows should be deprived of its legitimate prey only because more merciful methods would be adequate to deal with them. That such criminals should escape with penalties



which affect them so little that they fail even to produce a statutory repentance, tends both to deprave the public conscience and to encourage incipient offenders to enter upon a criminal career.

Until a very recent period every outbreak of epidemic disease led to panic and prayer-meetings : epidemic crime still leads to panic, but abuse of the police takes the place of the prayer-meetings. The abuse is less intelligent even than the panic. When an outbreak of fever occurs, we do not abuse the doctors. We know, what our fathers did not know, that it is due to causes which are definite and preventable ; and we take the means which science and common sense suggest to check the spread of the disease, and to prevent a recurrence of it. But in this matter of crime neither science nor common sense is allowed a hearing. When, after repeated warnings, a man has proved himself to be a moral leper, an outlaw, a criminal in character and habitual practice, to set him at liberty is quite as stupid and as wicked as it would be to allow a smallpox patient to go at large in the community.

Crime of a certain type, I again repeat, is an ineradicable evil. And even that blot upon our complex civilisation, though it cannot be effaced, might be considerably lessened. Nothing is more certain than that men can be made *immoral*

by Act of Parliament; and bad laws, such for example, as the Drink code, are responsible for a large share of the crime of the country. And yet no one who has opportunities of studying day by day the criminal returns from the metropolis can fail to feel wonder and admiration at the proof they give of the peaceableness and honesty of the mass of the population. But we shall never be rid of the lawless and vicious; and even among the honest and the peaceable, the pressure of poverty and the taint of insanity will always account for a certain amount of crime. The fact remains, however, that systematic, organised crime against property is entirely the creature of our present penal system. A single prison would suffice to hold the entire gang of well-known professional criminals who now keep the community in a state of siege; and a single wing of any one of our gaols would more than suffice to provide for the band of outlaws who may be described as the aristocracy of crime in England. But while we are ready to sacrifice any number of valuable lives on the battlefield, to attain results that are often doubtful and sometimes worthless, "the inalienable right" of these human beasts of prey, not only to life but to liberty, is maintained with all the blind fervour of a religious superstition.

If some small share of the labour and cost successfully expended upon keeping cholera and the plague from our shores, or even in stamping out disease among cattle, or rabies among dogs, were diverted in this direction, organised crime might be abolished in a single decade. The task would be a far easier one than that which sanitary science has accomplished. For while the germs of disease are subtle and secret, the criminals are known and easily detected. And there can be no crimes without criminals; no really bad offences without really bad offenders; and "really bad offenders might in a very few years be made as rare as wolves."

## CHAPTER III

THE preceding chapters are the substance of an article which appeared in the *Nineteenth Century* of February 1901. And my reason for thus reproducing that article is that it supplies the framework for the most important pronouncement of recent years on the subject of the present volume. I allude to Mr. Justice Wills' letter to the *Times* of 21st February 1901. The significance of that letter cannot of course be appreciated apart from the statements upon which it is based; and therefore I have quoted this review article almost *in extenso*,<sup>1</sup> though at some cost to the order and method of my book.

Here is the text of Sir Alfred Wills' letter:—

### “HABITUAL CRIME AND ITS TREATMENT

*To the Editor of the ‘Times.’*

“SIR,—I have read with the greatest interest Dr. Anderson's article in the *Nineteenth Century and After* and the leading article in the *Times*, both relating to the important subject of habitual

<sup>1</sup> It will of course be noticed that on pp. 5 and 6 I have brought the statistics down to the year 1905.

crime and its proper treatment. I am not at all sorry that the two writers represent widely differing views. There are few questions of any serious moment as to which much good is got by listening to one side only, and what is of the greatest consequence at the present moment is that public attention should be effectively drawn to the questions dealt with by Dr. Anderson and his critic, and the views of those by whom the difficult problem how to deal with habitual and professional crime has been long and seriously considered should be elicited and brought to a focus.

“Before touching upon the subject myself I should like to make it very clear what I understand by professional or habitual crime. There are very many persons who come before the criminal courts who have a formidable list of offences to their debit, who are yet in no sense professional or habitual criminals, and whom it is a cruel mistake to treat as such. There are many people of low *moral*, very poor, not very intelligent or well equipped either physically or mentally, who, under pressure of poverty, loss of employment, severe weather, sickness at home, or other unfavourable circumstances, cannot or do not resist the temptation to pilfer, and get convicted even many times, who yet do not

belong to the criminal class of which I am speaking. They prefer to work when they can get work ; they are habitually fairly honest, and only steal or obtain food or clothing or small sums of money by false pretences when better things fail. They do more harm generally to themselves than to other people ; they constitute no serious danger to society, and very often, indeed, deserve as much pity as punishment. There are others who come nearer to the professional criminal. They have been punished even severely and perhaps more than once, have made serious and honest attempts to live by fair means, but have fallen into bad company and been tempted back to crime, but yet do not live by it. Such persons, again, are often greatly to be pitied as well as blamed, and are not hopeless, and should not be treated as hopeless. But there are others who follow crime as the business of their lives, who take it as a profession, who calculate and accept its risks, who have entirely ceased to work, if they ever did work, and never mean to do so. Such men are really hopeless. No punishment will alter them, and the moment they are released they begin to practise crime again. They are teachers of crime both by precept and example, and their exploits often throw a kind of halo of romance over crime,

which does infinite mischief. The worst burglars, many of the blackmailers, most of the coiners and passers of bad coin belong to this class.

“What is to be done with them? For my own part I emphatically agree with Dr. Anderson when he says that the primary object of punishment is the protection of society, and that the reformation of the offender, though most important if it can be effected, is still only secondary to the primary object.

‘Jura inventa metu injusti fœtare necesse est,  
Tempora si fastosque velis evolvere mundi’

is the maxim of that wise old philosopher Horace, and it seems to me to indicate the true justification for penal legislation. This, however, is mere theory, and however much thoughtful men may differ as to the foundation of the right to punish, practically most are agreed that the reformation of the offender, a due warning to others, the avoidance of everything that shall shock the public conscience and tend to set the sympathies of unprejudiced people against the law or its administration, are objects to be borne in mind and duly considered whether in legislation or in the apportionment of sentences.

“In my opinion, however—and here again I find myself in complete agreement with Dr. Anderson—in dealing with the really professional

criminal, the protection of society requires stern measures; and such measures are really merciful if they can be made effectual towards the stamping out of habitual crime. Sometimes even severity may be of use, despite the objection many well-meaning people have to it. No crimes have been punished with more uniform severity than coining and blackmailing. There has been a great diminution in both. There can be no doubt that in respect to habitual crime heredity plays a large part, and it would be of great consequence could we prevent such criminals from becoming the parents of children who both from heredity and from parental influence and teaching, should they be exposed to it, are certain to become criminals in their generation. The real difficulty in the way of dealing effectually with such persons is twofold. The public in general, I am sure, do not fully appreciate what a source and centre of mischief the habitual criminal is. The means of ascertaining whether a man belongs to that class or not are imperfect and not always trustworthy, and it rests with the Judge whether an offender is to be treated as belonging to it or not. What appears to be a severe sentence, when nothing is considered but the individual case or cases for which a man is indicted, is apt to raise on behalf of the offender a false and un-



wholesome sympathy which would never be extended to him (except in so far as every instance of wickedness deserves in a general sense pity as well as condemnation) if the true character of his life were known.

“A second difficulty, and a very great one, is the continuous and (with modifications scarcely worth noting) the unrelaxing severity of penal servitude—the only punishment the law allows for any period beyond two years. Dr. Anderson pleads for something more sensible and less rigorous, but which should be capable of great prolongation. I am entirely with him. Over and over again I have been compelled to make a sentence far shorter than in my opinion the safety of society has demanded, and with a full conviction that the moment the prisoner should be released he would be at his old evil work again, because the long-continued application of such great severity is in itself almost too much punishment for any crime, and would be certain to cause something of a revolt against it, which is a great evil in itself. Surely here are matters deserving of serious and searching inquiry; and surely, if all the knowledge which must be accumulated and all the thought which must be bestowed upon the subject before anything is done is brought to bear upon it, there is reasonable hope

of arriving at some useful result. I can imagine nothing more unfortunate than hasty legislation on such a matter. It might throw back the cause of reform for generations and do infinite mischief. What would appear at first sight a reasonable treatment of the professional criminal would be a fair amount of real punishment, such as is afforded by penal servitude, for a period greater or less, according to circumstances, followed by detention, whether for life or only for a very long period, under conditions which, without being attractive, might yet involve very considerable relaxations of the discipline of penal servitude.

“A subject well worth consideration in connection with any such inquiry as I am advocating would be whether the fact that an accused person did belong to the class of habitual criminals should be ascertained by the verdict of a jury and upon what sort of evidence. To myself certainly such a means of determining the question would be far more satisfactory than the present method. There are places in which I from time to time administer justice where I know from experience that the information given by the police is absolutely reliable, and where, if anything can be said in favour of a prisoner—such as that he works when he can get work, or that

since his last imprisonment he has worked for such a time, but has fallen into bad company again, and the like—it is certain to be found in the report laid before the Judge, but there are others where I have not the same confidence. Such information, too, is generally confined to the large centres of population. It is rarely, if ever, obtainable from the county police, and even when it is obtainable it does not seem to me that, in respect of such a serious matter as shutting a man up for life or for twenty years, the mere report of the police authorities would be the right way of getting at the material facts.

“We have the means of effectual inquiry to our hands. For example, Dr. Anderson’s experience is very great indeed. He is undoubtedly fearless, and *pace* his critic in your columns, in my opinion, a merciful and fair-minded man. I doubt if any one would more cordially echo the warning I have ventured to give against confounding with the habitual criminal the man who is a good deal like him at first sight, but is not he, than Dr. Anderson himself. I should like very much to know Mr. Ruggles-Brise’s opinion on the matter I have been dealing with. I have had no communication with him on the matter, and it is quite possible he might take another view. But he is sure to have an opinion upon it, and,

whatever it is, it is certain to be well considered and extremely well worth having. He cannot speak, however, without some form of official inquiry. We have amongst our governors of gaols some men—many, I dare say, but I myself know some—whose opinions also would be entitled to great weight. I have been much indebted to many of them for information as to the habits and ways of thought of the criminal classes, which has been of great use to me in my work. Many of them have an enlightened sympathy with the prisoners, which would make their views more useful. ‘I have a positive respect for some of the men I see here, and I never despair of a man who will work,’ wrote to me some years ago a friend who was attached to one of our very important penal establishments. The chief constables of some of the great cities and counties must surely be able to contribute important information. There will be those who, like your contributor, have great faith in statistics and think we are doing well enough as we are. By all means let them be heard. What I want to plead for is not the acceptance of Dr. Anderson’s views, or my own, or any one else’s, but prompt and effective inquiry, and, if the outcome of such inquiry should be that substantial improvements can be effected in our methods of ascertaining

who are habitual criminals and of dealing with them when they are ascertained to be such, then, and then only, for legislation.

“I have the honour to be, Sir, your faithful servant,

“ALFRED WILLS.”

“ROYAL COURTS OF JUSTICE,  
*Feb. 15.*”

It was this letter which brought the reforms here advocated within the sphere of practical politics. My 1901 article was but a repetition of what I had published ten years before; but though in 1891 my scheme was taken up very cordially by the press, and especially by the *Times*, nothing came of it; and it was soon forgotten. But in 1901 Sir Alfred Wills followed up his letter to the *Times* in a practical way.

Referring to the punishment of old offenders, Mr. Justice Phillimore used the following words in his charge to the Grand Jury at the Maidstone Summer Assizes, 1902:—

“The calendar was remarkable for the number of charges of burglary and robbery with violence which it contained. It would perhaps be found, when the cases came to be examined, that the persons charged with burglary were old offenders. How such persons should be punished was a question which had recently attracted consider-

able attention. Sir Robert Anderson had written several interesting articles on the subject since his retirement, and the matter had been brought before the judges of the King's Bench Division by one of the oldest, the most experienced, and the most humane of their number. The result had been that communications had passed between the Home Office and the judges with the view of ascertaining whether it would not be possible to devise some new form of detention more or less permanent, but slighter in its incidence, than penal servitude, by which old offenders might be restrained from preying upon the public. It was constantly necessary for judges to pass sentence upon prisoners as to whom it was certain that when their term of imprisonment was over they would renew their old dishonest life. Such unhappy people were the despair of the judges, the police, and all reforming agencies. It would be well if, in the interests of the public, some scheme such as that which he had indicated could be elaborated without undue cruelty."

The matter was taken up also by the Commissioners of Prisons, as appears from the following extracts from their 1902 report to the Secretary of State :—

"There yet remain classes of prisoners for the treatment of whom no special machinery has yet

been devised, but whose case must in the near future engage the attention of Parliament, as it has been exciting much public opinion throughout the past year. We refer to the case of the 'professional' and the youthful criminal—the criminal at the end and at the beginning of his career. . . .

“With regard to 'professional' crime, we have submitted a scheme for the consideration of the Secretary of State, providing for the detention under special conditions of persons guilty of grave and habitual crime. . . .

“We use the word 'professional' in a technical sense, as men whose penal records show that they have lived systematically by thieving and robbery. . . .

“We believe that the time has now come when a special form of detention should be devised under which prisoners, shown by their records to belong to this 'professional' class, might be segregated by order of the Court for long periods of time, say, for the legal maximum for their last particular offence, subject only to conditional liberation by the Secretary of State, when he is satisfied, on the report of the prison authority, that there is reasonable ground to believe that the prisoner can be released without danger to society. . . .”

The pressure thus brought to bear upon the Home Office resulted in the Penal Servitude Bill of 1903. Since then, however, the nation has taken to politics—a lapse akin to that of the individual who takes to drink—and so the question is now shelved once more. Such prison reforms, indeed, as can be effected without legislation are being pressed forward by Sir Evelyn Ruggles-Brise and his colleagues in the Prison Department. But legislation is essential to bring about the radical changes necessary in our system of dealing with crime and criminals.

The main hindrances to such legislation are threefold: the *vis inertiae* of officialism, the apathy of the public, and the baneful activity of the “humanity-mongers.” It was with kindly intentions that I coined this unlovely phrase; for I wished to avoid giving offence to the “Humanitarian League.” But my considerate reserve was thrown away upon the officials of that body. For the moment my first article appeared in the *Nineteenth Century* they proclaimed upon the house-tops that they were the “humanity-mongers.” They themselves have decided that the cap fits them. Their society did some useful work for a time; but, as the American humorist said of his pet tiger after it had eaten his mother-in-law, “it has outlived its usefulness.”



These men are the friends of all who are criminals by choice and calling, but the worst enemies of that large class of persons who, being betrayed into the commission of offences, become the victims of our present system of "punishing crime." But these agitators have influence. In a small community the faddist is ignored; or if he degenerates into a nuisance he is suppressed. But when hundreds become thousands and the faddists are numbered by tens they become a coterie. In a population of millions they become numerous enough to form organisations with Press organs and representatives in Parliament. And just as in the sphere of company-promoting, honest men blindly lend their names to rogues, so in this sphere men of eminence and wisdom thoughtlessly allow their names to be paraded by the faddists. But while the vast majority of men are content to give an undemonstrative assent to what they approve, the agitators are active and noisy. When, for example, some miscreant receives his deserts, ninety-nine people out of every hundred are pleased, though they do not express their feelings by holding mass meetings or signing petitions to the Home Office. But a petty minority of dissentients will do all this and more; and it is nobody's business to expose them as mischievous "cranks." Mischievous, I say, because their in-

fluence is positively harmful to the cause they profess to champion. For their practice of raising an hysterical protest whenever a scoundrel is treated with something like adequate severity, reacts to the prejudice of the occasional victims of cruel sentences. And I must add that never a year passes in which the much-maligned police do not give more help to weak and deserving criminals than this sort of society has rendered during all its history.

## CHAPTER IV

IN the opening sentences of the preceding chapter I have explained how and why it is that this book has been cast in a popular form. And pursuing the same method, or want of method, I would again and again emphasise that its aim and purpose are not to urge that crime should be punished with increased severity, but that, abandoning the "punishment of crime" system altogether, we should treat our criminals on intelligible and common-sense principles.

I am no visionary. I cherish no wild dreams of making England a Utopia in which crime will be unknown. But my practical knowledge of the crime problem has led me to the conclusion that, so far as crimes against property are concerned, most of the crimes recorded in our criminal statistics are preventable, and indeed that they are the direct and natural result of the system I condemn. For example, "the short - sentence craze," which is one phase of the system, operates in two ways to promote crime. It leads to undue levity in committing chance offenders to gaol,

and it fails to protect the community against the depredations of the habitual. The law ought to be "a terror to evil-doers"; but we teach them to hold the law in contempt. The *Vicar of Wakefield* says truly and well, "The work of eradicating crime is not by making punishments familiar but formidable."

But some will tell us that we should trust for the diminution of crime to the effects of better education, improved sanitation, and other general influences of a similar kind. In his *Shifting Scenes*, Sir Edward Malet records a lesson once taught him by a housemaid in an Italian hotel. On his return to the house after a walk, the woman followed him to his room and reproached him for leaving his money lying on the table. I will let him tell the story :

"She sank upon a chair and burst into tears. 'Think of me, Signore, I am very poor, I have six children to keep, and a husband who can do no work. This money would make me rich, and you leave it on the table—the golden pieces—all loose, to dazzle my eyes, and to put the devil into my heart. Through your thoughtlessness I might go to gaol, my children starve, and my husband die. Ah, Signore mio, never do it again. Think of the poor; be merciful to us. Do not put temptation in our way.'"

A philosopher would of course be above listening to such an appeal. He would tell us to rely on education and other kindred influences to raise the moral tone of housemaids, and thus place them above the temptation level. The wisdom and efficacy of such views and methods will, I have no doubt, be triumphantly established in the millennium. But in the meanwhile practical men will take a practical view of the matter, and applaud the decision arrived at by the distinguished ambassador I have quoted. For he goes on to say that he profited by the lesson and never forgot it.

I must say I am amazed at the blindness and inconsistency of those who maintain that influences of a general kind, such, *ex. gr.*, as education, will certainly make their mark upon the criminal statistics, while they refuse to admit that other influences which operate more immediately in the same direction will produce similar results more rapidly and in a greater degree. Those who refuse to sanction reforms aimed directly at the diminishing of crime, or the mitigation of the evils of drunkenness, ought to persist in exposing their valuables to the weakness and cupidity of servants. But fortunately men's selfish interests sometimes supply a useful check upon the mischievous effects of false theories.

To return to Sir Edward Malet's story, let us change the venue from Milan to London, and suppose that the servant has yielded to the temptation thrown in her way, and stands convicted of the theft. The question arises, What shall be done with her? "Crime must be punished" is the answer some will give. I am reminded of the French Judge's reply to a prisoner who excused his crime on the plea that "a man must live." "Pardon me," was the cynical rejoinder, "but I don't see the necessity." I give the same answer here. A court that sentences a criminal on the ground of an obligation to punish is guilty of the sin of Korah: the act is the usurpation of a Divine function. But it will be said, the necessity is of a practical kind; for the criminal must be punished in order to deter others from crime. If so, we should bring back the gallows, for an execution is a public event, and every one comes to know the details of the crime which leads to it. But the housemaid's case would be known to no one — not even to the servants next door; for she of course would be anxious to conceal her fall, and it would be nobody's business to publish it.

When a crime is committed, society has an absolute right to punish the criminal with whatever measure of severity its interests may require;

but there exists no abstract obligation to exercise that right. In the case under consideration the circumstances make it clear that no public good would result from imprisoning the woman. And so she is discharged from the dock, and in due course another situation is found for her. This is in accordance with recent legislation and present practice.

Now let me add a second chapter to the story. The woman is tempted again, and once again she yields. Owing to the "previous conviction" she is sent for trial; and now, being convicted on indictment, she becomes an "habitual criminal." Were the venue in France the Court would take cognisance of the whole story of her life. But the only *dossier* of which English law takes notice contains nothing but the record of a prisoner's crimes. If the accused have means and be well defended, everything that can be urged in mitigation of punishment will of course be brought before the Court. But what chance has the friendless housemaid, crushed and silent as she thinks of the husband and children whose needs tempted her to commit the crime which must now bring ruin upon them as well as upon herself? If all the facts and circumstances were known, a "strong" Judge might give her another chance, "habitual criminal" though she be. But neither

the law nor the procedure of our criminal courts makes any provision for such an inquiry.

But this is a hypothetical case. Let me cite a real one. And none will suit my purpose better than a crime of which, some years ago, I myself was the victim. The thieves were three in number. The first was my cook. She had lived in my service for years and was thoroughly trusted. No. 2 was also well known to me. I had got for him a berth in one of the Government departments, and for years he had borne an excellent character. But under the influence of No. 3 he had fallen into bad ways. For No. 3 was an old thief of the most dangerous type. He had already suffered two long terms of imprisonment for felony; and, though earning his living as an auctioneer's porter, he used his business as a cloak for thieving. At his instigation No. 2 had already become involved in a small larceny, for which he was summarily convicted; and he now induced the man to join him in robbing me. Together they plied my servant with drink and then drew her into the plot. All three were brought to trial and convicted, and the question is, What ought to have been done with them?

First, as to the woman. If crime must be punished, and punishment is to be apportioned according to the moral guilt of offenders, no



sentence could well be too severe in her case. But the very elements which made her crime so specially heinous are regarded nowadays as affording ground for leniency. And yet her conduct upon arrest was bad; for, with the idea of screening her guilty lover, the No. 2 in the plot, she refused all information both to myself and to the police. But notwithstanding this it seemed to me that, in all the circumstances, the interests of society did not require her imprisonment. And I was able to lead the Court to take this kindly view of her case and to hand her over to the care of a "Home."

I put in a similar plea for No. 2, but without success. The man was honestly penitent, and had done everything in his power to make reparation for his crime. He was weak rather than wicked; and if the scoundrel who had traded upon his weakness to draw him into crime were out of the way, he might redeem his character and return to an honest life. For No. 3, of course, I asked for an exemplary sentence. There was nothing to be said in his favour. He was not only a thief by deliberate purpose, but a trainer of thieves, a corrupter of the innocent. But in the eye of the law both men stood on the same level as "habitual criminals." So the one was sentenced to the maximum term of im-

prisonment with hard labour, and the other to the minimum term of penal servitude then allowed by statute. I do not dispute the propriety of these sentences as judged by our present system. But I believe there is not a Judge upon the Bench who, if all the facts and circumstances known to me and to the police were placed fully before him, would not agree with me in thinking that both sentences were indefensible and wrong; that society profited nothing by the prolonged imprisonment of the one man, and that it was not adequately protected by the sentence imposed upon the other. Cases sometimes occur in which a Judge puts back a prisoner and holds a patient and searching inquiry into the story of his life and the circumstances of his crime. But such cases are rare. The usual practice is for the Court to call upon the subordinate police officer in charge of the case to state what he knows of the antecedents of the prisoner, and upon that statement the sentence is awarded. The proceeding is seldom satisfactory; and if the result be unfavourable to the accused it is scarcely in keeping with English notions of justice and fair-play, for no adequate opportunity is afforded him of answering what is urged to his prejudice.

But here I am traversing ground already covered in a previous chapter. I will only

repeat my demand that a conviction for a crime shall be followed—to quote Sir James Stephen's words once again—by a “formal public inquiry” into the career and circumstances of the criminal; and that instead of apportioning punishment to the specific offence charged, the offender's fate shall be decided by the result of that inquiry.

This would be entirely in the spirit of modern legislation, and it would be the death-knell of “our absurd system of punishing crime,” a system which, in spite of modern legislation and more enlightened procedure, still continues as a survival of the days when the convicted felon went to the gallows. The sentence has been changed, but the principle on which the sentence is awarded remains practically the same.

If the interests of society clearly demand the imprisonment of the offender, the question remains, With what definite object is the imprisonment to be imposed? A person committed to gaol for safe custody pending his trial is treated differently from a prisoner under sentence: is it unreasonable to suggest that an offender committed with a view to his moral education shall be subjected to a discipline specially designed and fitted to reform him? But this is one of several incidental problems which

I cannot discuss here. I come to the crux of the matter—the treatment of the professional criminal.

Criminals differ from one another as much as do the members of any other class of the community; but for my present purpose I will deal with two types which I may loosely describe as the utterly weak and the utterly wicked. At present, under our cast-iron system of “punishing crime,” no distinction is made between them. But is this right? The weak may be quite as mischievous as the wicked, but have they not a claim for special consideration and pity? The progeny perhaps of the sort of criminals that are the pets of the sham philanthropists, they are the product of a system for which the community is largely responsible. Born and bred in a criminal environment, they have no power to resist temptation. They take to crime as a drunkard takes to drink, though in their better moments they deplore their weakness. Not infrequently persons of this class commit offences with the avowed object of getting back to prison in order to escape the demon which enslaves them. But at present we have to make choice between the farce of shutting them up for a while and then turning them out again to prey upon the community, and the barbarity of

consigning them to penal servitude for a prolonged term.

I plead, therefore, for the establishment of what I call asylum prisons, in which those who give proof that they cannot be trusted with liberty shall find a suitable home. Discipline should, of course, be enforced, and industry too, for a prison ought to be self-supporting; but any reasonable indulgence consistent with industry and discipline should be permitted. That this scheme is feasible experienced prison governors will testify. One serious practical difficulty besets it, but it is of such a nature that a discussion of it would be unsuitable here. Suffice it to say that I am not the only person who has considered it and who is ready for its discussion.

But in dealing with this great problem of crime we must keep, as the Americans phrase it, a level head. While refusing a hearing to the advocates of unreasoning severity on the one hand, we must also decline to be influenced by the fads and follies of the humanity-mongers and doctrinaire philanthropists on the other. If I plead for consideration and pity for certain classes of criminals, it is not because I yield to the maudlin sentiment that warps the judgment of many in all that relates to crime. Crime is heinous and hateful, and the criminal is the enemy of society. And

any influence which denies or conceals this tends to deprave the public conscience. But I remember the sacred words, "Of some have compassion, making a difference." So much for the "utterly weak." Now I turn to the "utterly wicked."

When I was appointed on the Prison Commission twenty-four years ago shot-drill was practised in some of our gaols. It consisted in carrying cannon-balls from one spot to another in the prison yard, and then carrying them back again. It was a pitiful waste of muscular power. Shot-drill has now been abolished in prisons; but the energies of the most highly-trained police in Europe are being expended in ways to which shot-drill bears a striking resemblance. A crime of a certain sort is reported. An oil painting, for example, has been stolen in the night from a public gallery. "Sherlock Holmes" would sit down with a wet towel round his head and think out the problem of finding the thief. "Sherlock Holmes" himself was no doubt a genius, but people who follow his methods are apt to fasten suspicion upon several different persons, not one of whom perhaps had anything to do with the crime. Scotland Yard sometimes arrives at the desired result by a process akin to that by which experts of another kind can tell us who painted the stolen picture.

Of course, if a man leaves his doors and windows unfastened, any other man, though as great a fool as himself, can break in and steal. But the crime we are dealing with was evidently the work of a trained and accomplished burglar. The men competent to plan and execute it are limited in number and definitely known. Some of these, however, are in seclusion at present, "doing time" for several offences in the past. They will be back at work in a year or two; but for the present we may ignore them. Then, again, A, B, and C are known to be out of London in the course of their business, and D, E, and F are proved to have been at their registered addresses on the night of the crime. The list thus becomes reduced to working dimensions, and it is not difficult to go on eliminating one name after another till the thief is discovered. If evidence is forthcoming he is arrested and brought to justice. Previous convictions are proved; sentence, five years' penal servitude. In less than four years he is back at the practice of his profession. After another good run, in which he commits some ten, twenty, fifty crimes, enjoying what schoolboys term "a high old time," he is caught again, and the same farce is again re-enacted. This is the shot-drill of the Criminal Investigation Department. Well, the

police are paid for their work ; the criminals are delighted with the system ; and, if the public are satisfied, who has a right to complain ?

Who has a right to complain ? The victims of the crimes of these miscreants have a right to complain. If it be recognised that criminals are entitled to live at the expense of the community, the community should be taxed to provide an income for them, or, at all events, to compensate the sufferers. The time was when kings could pounce upon individual citizens and arbitrarily seize upon their property. It is only professional criminals who are allowed to do this to-day. What would raise a revolution if attempted by the king, is practised by the burglar at his pleasure. And if the aggrieved householder cries out for relief or demands justice, the criminal statistics will prove him to be unreasonable, and the humanity-mongers will denounce him as vindictive and cruel. Here I am repeating myself ; but there are some things that need to be repeated again and again. When a man feloniously seizes his neighbour's property no means which a civilised society may use should be spared to enforce restitution. If for this purpose we refuse to have recourse to thumb-screws and the rack, it is consideration for the community and not for the thief which restrains us.



Who has a right to complain? Is there to be no pity for the unfortunate relatives and associates whom these "human beasts of prey"—I repeat the words with emphasis—seek to drag down to the level of their own degradation? None for the wretched children whom they are allowed to beget and to train up to walk in their ways? "The tender mercies of the wicked are cruel:" no less cruel are the tender mercies of the doctrinaire philanthropists.

In all that I have written I have been dealing only with crimes against property. And in treating of habitual offenders I have made but a very brief reference to the *élite* of the criminal profession. Of these I have a good deal to say; but here and now I will only remark that in England the men who are competent not only to finance, but to organise crimes are so few that the room in which I am writing would suffice to seat them comfortably. But we have always a section of them at large to keep the business going; it would collapse if all were shut up at once. Crime there will ever be; organised, systematic crime is the creature of our present methods. With the doctrinaires these men are units in the statistics of the criminal classes. With the police—the victims of the shot-drill I have described—they are real

living persons. Indeed, they are as well known as our Cabinet Ministers; nor is this wonderful, for possibly they are not more numerous. And to those who know these men and their habits and histories, our treatment of them seems to savour of lunacy.

But the doctrinaires will tell us that crime cannot be suppressed by punishment. I dislike this term "doctrinaire," but I use it to describe those who act upon theories without reference to facts, and for the word in this sense I can find no Saxon equivalent. "Fool" is quite too general—it represents an entire species—and, moreover, it is not polite. I am not surprised that those who propound such a dictum are unable either to understand the strength of my position or to appreciate the inconsistency of their own. If criminals are dead to the influences which control the actions of ordinary men, if neither the fear of punishment nor the infliction of it can avail to restrain them, then all punishment is barbarous and law-breakers should be treated like lunatics. But though we do not *punish* lunatics, we do deprive them of their liberty; and, if the doctrinaires are right, the criminals should be shut up for life. All who have practical knowledge of criminals recognise that *some* of them are within the category. And

my suggestion is that such should be treated accordingly, but that those whom punishment will deter should have enough of it to make it efficacious.

But what is our present system? The medicine is good for some of the patients; for others it is wholly unsuitable. But, as we do not diagnose their cases separately and have only one treatment for all alike, we limit the dose, lest those who ought to get none should be harmed by it. And the result is that those whom the physic suits do not get enough of it to benefit them. This is the short-sentence, punishment-of-crime system reduced to a formula!

We should seek to check committals to prison; but we should seek, also, to make imprisonment answer its purpose, whatever that purpose may be. Some offenders need punishment, others reformation, and others, again, are committed mainly to protect the community against their misdeeds. But all are treated alike; for prison discipline, like death, levels all distinctions. In his *Fifty Years of Public Service*, Major Griffiths tells the story of a gunboat which the Admiralty sent to the East with a medicine chest on board, but no medical officer, the captain being ordered to use his discretion in doctoring the ship's company. But the captain knew nothing of medicine, so

he had all the bottles emptied into a pail, and any man that went sick got a dose of the mixture ; for, as he explained, there was bound to be something in it to suit him ! The story further illustrates the system on which we deal with our criminals.<sup>1</sup>

<sup>1</sup> In saying this I am neither unmindful nor unappreciative of the praiseworthy efforts of my friend Sir Evelyn Ruggles-Brise and his colleagues to introduce reforms, especially in the case of the young ; nor is it any fault of theirs that in these respects they resemble the criminals whose struggles to mend their ways are hindered by want of help and inability to break with the past.

## CHAPTER V

MOST of those who have practical acquaintance with the subject, and are best fitted to speak upon it, testify that the great mass of ordinary crime could be reduced within narrow limits by the operation of reforms of a reasonable and practical kind. Reforms, I mean, such as are calculated to raise the tone of life generally among the masses of the population, and to protect them from temptations and dangers which at present engulf unnumbered victims. Some of our ablest and most experienced Judges, indeed, have publicly declared their conviction that most of the crimes which come before the criminal courts may be traced directly or indirectly to the one vice of drunkenness. I have before me, for example, a report of a speech of one of the greatest Judges of this generation—I mean Lord Cairns—in which he used these words: “I believe it is scarcely possible to exaggerate the blessings which would come down upon the country from the practice of temperance. *It would empty our gaols.*”

But it would seem that no legislation upon this

question may be looked for at present ; and for the simple reason that any radical reform of the drink code would, if successful, involve the abandonment of our present fiscal policy, and that policy commands the almost fanatical support of the great majority of the temperance party. It is not my purpose to enter on a discussion of the merits or demerits of what is called Free Trade. But I wish to point out that it operates to keep His Majesty's Treasury "in the same boat" with the public-house interest. For the Treasury largely depends for its revenue on the drinking propensities of the population.<sup>1</sup>

The temperance party believe that the legislation they advocate would reduce the consumption of intoxicants by one half. But this would involve a loss to the revenue of more than £14,000,000 in Excise duties alone. And can any one imagine that the Government would deliberately bring about such a deficit, while even a peace budget requires a shilling income-tax, and high Customs duties on the food of the poorest of the people ?

Any reform, therefore, sufficiently thorough to

<sup>1</sup> The contribution to the general taxes paid by an ordinary working man with a family to support amounts to not more than a halfpenny a day ; but his contribution to the Excise in paying for his daily drinks averages at a low computation not less than five-pence a day. That is to say, a man who drinks pays some ten times more to the public chest than the teetotaller.

put an end to the drink curse would leave the Treasury bankrupt, and before it can be introduced "Free Trade" must go.

And this will take time. People are slow to perceive that whatever the merits of real Free Trade—and I am expressing no opinion upon it here—the system called "Free Trade" in England is an imposture and a sham. If a man's life depended on his explaining on Free Trade principles why tea and coffee should be taxed on entering the country, while, *e.g.*, watches and boots come in free, that man's life would not be insurable. An import duty on alcohol or tobacco can be explained on special grounds; but the only possible explanation of a similar duty on tea and coffee is that everybody needs them, and everybody should be made to contribute to the taxation of the country. And, this being so, there is no reason whatever why watches and boots should not be treated in the same way. Indeed, there are strong reasons for levying a duty on articles of this kind which do not apply to tea and coffee; for if the tax should limit the importation, our working classes at home would be benefited.

If, therefore, the drink curse be a principal cause of the ordinary crime of the nation, and if the cure of the drink curse awaits a reversal

of a fiscal policy which is popularly regarded with a reverence that is almost superstitious, it is idle to hope for any speedy reform in this direction. And, moreover, the operation of reforms of that character is generally gradual and slow. It is my aim, therefore, to direct attention to changes of another kind, the introduction of which, moreover, would produce immediate results.

The crime of the country is generally regarded, not only without distress and shame, but with ignorant and stupid complacency, because, forsooth, it is diminishing. Such complacency springs from contrasting what is with what has been, instead of comparing it with what might be. When the Prison Act, 1877, came into force, one of the first acts of the new Prison Board was to close half the prisons of England. But people forget that those prisons were provided at a time when the masses of the population were steeped in utter ignorance and sunk in abject poverty such as this generation has happily no conception of. The effect of the removal or modification of these fruitful causes of crime should be accepted as proof that crime is preventable; and, further, that in the altered circumstances of the population the crime of to-day is more disgraceful to the community than was the much greater volume of crime in the dark days now past.



A few years ago any one who proposed to prevent an outbreak of cholera or the plague would have been scouted as a dreamer, or possibly denounced as an Atheist. And yet our present immunity from these scourges is regarded so much as a matter of course that no thought is given to the patient labour and unsleeping vigilance of those by whom these results are attained. And if the reforms which have availed to check the spread of infectious diseases had not taken the public by storm, they would have been opposed far more vigorously than the changes are resisted which I advocate in regard to crime. It would have been urged, first, that to require the authorities to take notice of every case of infectious disease would be utterly impracticable; and secondly, that the measures necessary to enforce this, and to give effect to it, would be a flagrant outrage upon the liberty of the subject and a violation of the British Constitution. And as we mark the success of these measures we wonder at the apathy and ignorance which prevailed until a few years ago in dealing with disease, and the next generation may possibly wonder at the blindness and stupidity which characterise our own day in dealing with crime. But while the former apathy respecting disease was due entirely to ignorance, our attitude towards crime is largely

due to the controlling influence of a false principle.

With most men the obligation to punish crime still ranks with the eternal verities, and in days not long passed away it was universally unquestioned. The fate of a convicted felon was never in doubt. The commission of the crime was not infrequently followed by an arrest, and the arrest by a conviction. The person convicted, who it may be hoped was generally the actual criminal, went to the gallows as a matter of course. He might be a useful member of the community, or he might be a dangerous outlaw, but considerations of this kind had no bearing on the issue. Crime had to be punished, and the legal punishment for felony was death. But as civilisation advanced, and varying terms of transportation, or of penal servitude or imprisonment, took the place of hanging, it became necessary to apportion the sentence to the crime.

In some cases the infliction of any punishment at all was a loss to the community; in other cases the legal limit of the sentence precluded a court from giving adequate protection to the public. But in every case the question was what punishment was fitted to the *crime*, and not to the *criminal*. An immense advance was made when the legislature

enacted that in sentencing a convicted prisoner the Court might take cognisance of previous crimes recorded against him, and impose a heavier sentence on account of them. This was the first departure from the cast-iron operation of the "punishment-of-crime" system. But the law by implication required that some measure of punishment should be imposed in every case. This requirement, however, the Judges not infrequently ignored, unless where a statute denied them a discretion by fixing a minimum sentence. These minimum-sentence enactments have now been repealed, and the last step we have reached is the legalising the discharge of first offenders.

But in spite of all these changes the *punishment of crime* still remains the governing principle of our penology, and my aim is to show that that principle is theoretically unsound and practically mischievous. Nor is this discussion one of merely academic interest. I contend that if our criminal courts dealt with the criminal instead of with the crime, all crimes against property would be sensibly reduced, and professional crime might be altogether suppressed. Some Judges endeavour to do this very thing. Not content with a prisoner's official *dossier*, they seek to investigate his character and antecedents in a larger sense, and they apportion his sentence according to the result

of that inquiry. But the law gives no sanction to this ; and, of course, it makes no provision for holding such an inquiry openly, and with fairness to the accused.

And this system of informal inquiries is responsible for some share of the popular outcry against inequality of sentences. In too many instances that outcry is abundantly justified. Indeed, it may be doubted whether any decided improvement has taken place in this respect since Lord Herschell called attention to the subject in Parliament some seventeen years ago. He cited a case where two prisoners, convicted of similar crimes, and equally guilty, were sentenced, the one to a long term of penal servitude, and the other to two months' imprisonment. Many cases of this kind occur which admit of no satisfactory explanation. But equality of sentences is not infrequently advocated on grounds which are wholly ignorant and wrong. Some crimes which, in the cold light of the legal evidence, appear in all respects equal, differ so widely that the one may deserve the severest punishment, and the other no punishment at all. Let me illustrate this. A. B. is convicted of stealing five shillings, and is sentenced to a long term of penal servitude ; C. D. is convicted on a precisely similar charge, and he is released from the dock. But the explanation is

simple. The one crime is regarded as a last and crowning proof that the offender is a hopeless criminal, an irreclaimable outlaw; whereas the circumstances in which the other crime was committed excite compassion for the offender.

It must be acknowledged, however, that on the punishment-of-crime principle both these decisions are unjust, and any one who takes that view may plead that he has the law on his side. He may fairly argue thus: "In former times both men would have been sent to the gallows. No considerations about the character or circumstances of the felons would have affected their fate. Nowadays, it is true, the punishment is different, but the principle of law on which the punishment is ordained remains unchanged. The Court ought to consider the crime, and not the criminal. Therefore to send a man to penal servitude for stealing a few shillings is monstrous; and to let a thief go entirely unpunished is a miscarriage of justice. 'Justice is blind,' and these new-fangled methods and ways are an outrage upon justice."

Now I admit the fairness of the argument. I recognise that the punishment-of-crime principle underlies our criminal law, and that upon that principle both decisions in the case I have supposed are indefensible. But my object is to

arraign the law itself, and to challenge the whole position on which this argument is based. "Justice is blind!" It was blind justice that in other days filled our gaols to overflowing and provided the gallows with victims by the score. But, happily, justice is no longer blind in England.

But, it may be urged, all this is matter of opinion, and opinions differ. I come back, therefore, to deal with a definite practical question in a practical way. In previous pages I have shown that if statistics can prove anything they prove unmistakably that ordinary crimes against property are diminishing, but that crimes of the kind which the police know to be the work of professional criminals are increasing. And those who challenge this statement have misread both the facts and the statistics; and, further, these conclusions are really based, not on the study of statistics at all—for statistics may err and mislead—but on the facts as known to those who have to deal with criminals in a practical way.

As day by day, and year by year, I used to study the "morning reports" of crime at Scotland Yard—and every crime of Greater London, with its 6,000,000 inhabitants, was reported to me—I found abundant proof, first, that the great mass of the people are honest and law-abiding, and secondly, that professional crime is a clearly de-

finer element in the general crime of the metropolis, and that if it were eliminated property would be as safe in the suburbs of London as it is in rural England. Sometimes I had *nil* returns from the whole of the West End. Occasionally I had *nil* returns from upwards of half of the Metropolitan Police District, and I may add that days on which there were not *nil* returns from some at least of the principal divisions of the metropolis were exceedingly rare. Every one knows that in rural England there are numberless districts, and populous districts too, where crimes against property are almost unknown; but most people will hear with surprise that this is also true of many places within fifteen miles of Charing Cross.

If crimes against property were to be accounted for, as the philosophers suppose, by "the criminal impulse" or the pressure of poverty, a foggy night would bring a crop of them, and a prolonged frost would be a time of public danger. But as a matter of fact a fog causes no anxiety to the Criminal Investigation Department, and a burglary epidemic, like a fever epidemic, flourishes in mild weather, and a drop of twenty degrees Fahrenheit will check it. And the reason is plain: professional crime is organised crime, and all organising involves time; and professional men, burglars included, do not care to be abroad

at night when the thermometer is getting down to zero.

And this brings into prominence the difference already noticed between the way in which the public regard an outbreak of crime and the way in which it is treated by an intelligent police force. With the public it is a question of statistics, whereas with the police it is a question of *persons*. Let me once again explain that I am here dealing only with crimes against property. No one is a murderer in the sense in which many men are burglars. At least "the Whitechapel murderer" of 1888 is the only exception to this in recent years. And that case, by the way, will serve to indicate the difference I wish to enforce. In my first chapter I alluded to the fact of that fiend's detention in an asylum. Now the inquiry which leads to the discovery of a criminal of that type is different from the inquiry, for example, by which a burglar may often be detected. If a ground-floor dining-room window is left open at night, and the spoons and forks are missed next morning, there is no mystery about the crime, and no use in "searching albums" to find the criminal. But if a house which is properly secured is broken and entered, the case claims careful investigation. I mention burglaries only because the public "catch on" about crimes of this character. My



remarks apply still more forcibly to other branches of professional crime. A man who commits a burglary is a burglar in the same sense in which a man who commits a murder is a murderer. But burglaries are usually committed by men who are burglars in the sense in which other men are doctors, lawyers, architects, &c. The only difference, indeed, is that in the burglar's trade success gives proof of greater proficiency than seems necessary in other lines.

I never realised what an amount of determination and nerve it needs to break into a dwelling-house at night until I discovered my own deficiencies in these respects. I learned the lesson while living with Charles Reade long ago in the house at Albert Gate which he afterwards christened "Naboth's Vineyard"—the house, by the way, in which Mr. Rolfe received his visitors in *A Terrible Temptation*. On arriving at home late one night I found I had forgotten my latch-key, and being unable to rouse the inmates I decided to enter burglariously. My experience of criminal courts had given me a theoretical knowledge of the business, and it was with a light heart that I dropped into the area and attacked the kitchen window. Of course I had no fear of the police. Neither had I any cause to dread a pistol shot in entering the house. And

yet such was the effect on my nerves of spending twenty minutes in that area that the sound of a constable's tread in the garden made me retreat into the coal-cellar. I felt then that my case was desperate. As there were no steps to the area, escape was impracticable, and a new bolt on the window baffled me. So at last I was driven to break the glass. It is extraordinary what a noise it makes to smash a pane of glass when one does it deliberately; and the passers-by were attracted by the sound. But they had no bull's-eye lantern to flash into the area, and as I had again taken refuge in the cellar they could see nothing to account for the noise. As soon as they were gone, it was an easy task to shoot the bolt, open the window, and scramble into the house.

As I have digressed to narrate this story I may as well finish it. The police were sent for next morning, and detectives investigated the crime. The broken glass and the marks both inside and outside gave proof of a felonious entry; but, *mirabile dictu*, nothing was disturbed, nothing was stolen. The case was most mysterious, and it passed into the statistics as an undetected burglary. And those who knew Charles Reade will believe me when I add that when I afterwards told him the facts his delight was unbounded.

And now for the moral of my story. I want to

break down the popular idea that serious crimes against property are, like many serious crimes of violence, the result of accidental circumstances or sudden passion. Such crimes are deliberately planned and executed by expert criminals. Any bricklayer's labourer can build a "lean-to" shed, but it needs an architect to build a dwelling-house. And any tramp can enter a house through a window or door left unfastened, but it needs a trained burglar to get through doors or windows that are securely bolted and barred. And when it comes to such special feats as safe-breaking, for example, the men competent for the task are so few that some police-officers could possibly write down the names of them all from memory. When a crime of a certain sort occurs a "Sherlock Holmes" inquiry is as unnecessary as it would be futile. The practical problem is to discover what members of certain definitely known gangs of thieves were engaged in it.

It is to this habit of dealing with criminals instead of with crimes that the phenomenal success of the Criminal Investigation Department is largely due. I have no reserve in praising a department of which I was recently the chief, and for the excellent reason that no one knows better than I to whom the praise for that success is due. With a chief who did not enjoy the

fullest confidence and respect of his subordinates success would be impossible; but the best of chiefs can do little more than stand behind the working staff—a body of officers that, *as a body*, when judged by the double test of efficiency and character, are unequalled in the world. Character I include with emphasis because it is often overlooked when judging of the relative merits of different forces.

When I speak of efficiency some people will exclaim, “But what about all the undetected crimes?” I may say here that in London at least the undetected crimes are few. But English law does not permit of an arrest save on legal evidence of guilt, and legal evidence is often wholly wanting where moral proof is complete and convincing. Were I to unfold the secrets of Scotland Yard about crimes respecting which the police have been disparaged and abused in recent years, the result would be a revelation to the public. But this is not my subject here.

To illustrate the importance of dealing with criminals instead of with crimes, I may cite an instance that is of interest to the public. When I went to Scotland Yard I found that a gang of pickpockets had been living in luxury for years by the practice of their trade on the Channel boats of the South-Eastern and the London, Chatham,

and Dover Railway Companies. Owing to the cleverness of the thieves, the protection afforded them by our criminal law, and the conflict of jurisdiction between English and French police forces and courts, to obtain a conviction proved impracticable. But it was possible to deal with the thieves. *That* involved merely taking some liberties with Blackstone, and the "British Constitution" generally. The gang was broken up. Their nefarious trade was brought to an end. And nowadays the theft of a traveller's pocket-book is almost unknown, whereas formerly there were often several cases of the kind in a single day.

But, it may be said, I am thus supplying an answer to all I have already written on this subject. If crime can be so easily prevented what excuse can there be for arraigning our present methods of dealing with it? The answer is simple. These special crimes were the work of a few high-class thieves; and when the gang was exposed the hope of their gains was gone. It is easy, moreover, by police action to make property secure in any particular place. And this might be done for the entire metropolis by increasing the police force fivefold. That is an alternative proposal to mine. But is it a practical one? It would add some £6,000,000 a year to the cost of

the Metropolitan Police. And even if the cost did not veto it, would it be a rational one?

The problem here relates to professional criminals, that is to those (as Sir Alfred Wills expressed it in his *Times* letter) "who follow crime as the business of their lives, who take it as a profession, who calculate and accept its risks, who have entirely ceased to work, if they ever did work, and who never mean to do so." Now there are two alternative ways of dealing with this problem. The one is the present punishment-of-crime system, under which each of these professional criminals, when he happens to be caught, is put away for a term that is deemed an adequate punishment for the particular crime proved against him (consideration being given, of course, to previous convictions legally proved), and then he is set free again to resume the practice of his profession. The other system, which I advocate, is that when a criminal gives proof that he has deliberately chosen a life of crime the community should be protected by depriving him of the liberty he thus abuses. As he has by his own choice and conduct outlawed himself, let him be treated as an outlaw.

I do not advocate a death sentence in such cases, and for the simple reason that no such drastic measure is needed. I am not theorising

about statistics. I have in view the men who constitute the class I refer to—men who are thoroughly well known to the officers of the Criminal Investigation Department, and upon whom the entire organisation of crime against property in England depends—and I say deliberately and with confidence that if the system I have described were announced to take effect on the 1st of January next the immediate change with respect to crime would be equal to the results achieved in the sphere of sanitation in recent years. I go further and maintain that the practical difficulties in checking an epidemic of typhoid, or in preventing an epidemic of cholera—difficulties which have been successfully overcome—are enormously greater than would be the difficulty of putting an end to crime of the kind here in question. The system which has availed to check or prevent disease is a triumph of which we may well be proud; the system which accounts for the prevalence of professional crime is a disgrace to the country and the age. Some people may be surprised at the vigour of my language in denouncing that system. But if I were writing only for those who, knowing me, know that I am in the habit of weighing my words, I would use far stronger language to describe our present methods. The public, how-

ever, might attribute this to hysterics—a complaint I do not suffer from.

Here is an extract from one of the morning papers :

“Hewson Patchett, forty-eight, was yesterday sentenced to two years’ hard labour for obtaining £7 and a gold watch by false pretences.

“He urged it was his first offence, but a London detective informed the Court there were about two hundred cases against him for house-breaking.”

I will cite yet another typical case :

“Francis Howsham was charged at Newington Sessions with defrauding London lodging-house keepers. He posed as a first offender, and pleaded that the police were trying to take an advantage of him. But after the jury had found him guilty, it appeared that fourteen previous convictions were recorded against him, and that he had served sentences of penal servitude and imprisonment, amounting in the aggregate to forty years. In sentencing him to three years’ penal servitude the Judge observed that the prisoner had been carrying on a system of fraud for more than half a century.”

Cases of this kind abound ; and I appeal to them to illustrate the working of our punishment-of-crime system. If these men be cool,



deliberate criminals, our method of dealing with them is utterly farcical, and brings the law into contempt: if they be miserable weaklings who cannot abstain from crime, our treatment of them is infamously barbarous.

My proposal, then, is definite and simple; and my apology for thus repeating myself again and again must be that it is only by constant repetition that venerable traditions can be overcome, and stupid satisfaction with the present state of things can be disturbed. I urge that when an accused person has been tried and found guilty of a crime the Court, instead of *punishing the crime*, should proceed to inquire who is the criminal, and what are his character, and antecedents, and circumstances; and that upon the result of that inquiry he should be dealt with in whatever way the interests of the public demand.

The effect would be that some offenders who now go to prison would be restored to the ranks of labour; that some who are now treated as hardened criminals would be relegated to an asylum prison, where they might lead useful, and not unhappy, lives; and that all who give proof that they live by preying upon the community would be permanently deprived of the liberty which they thus abuse.

## CHAPTER VI

WHEN I took charge of the Criminal Investigation Department I was no novice in matters relating to criminals and crime. In addition to experience gained at the Bar and on the Prison Commission, secret service work had kept me in close touch with "Scotland Yard" for twenty years, and during all that time I had the confidence, not only of the chiefs, but of the principal officers of the detective force. I thus entered on my duties with very exceptional advantages.

I was not a little surprised, therefore, to find occasion to suspect that one of my principal subordinates was trying to impose on me as though I were an ignoramus. For when any important crime of a certain kind occurred, and I set myself to investigate it *à la* Sherlock Holmes, he used to listen to me in the way that so many people listen to sermons in church; and when I was done he would stolidly announce that the crime was the work of A, B, C, or D, naming some of his stock heroes. Though a keen and shrewd police officer, the man was unimaginative,

and I thus accounted for the fact that his list was always brief, and that the same names came up repeatedly. It was "Old Carr," or "Wirth," or "Sausage," or "Shrimps," or "Quiet Joe," or "Red Bob," &c. &c., one name or another being put forward according to the kind of crime I was investigating.

It was easy to test my prosaic subordinate's statements by methods with which I was familiar in secret service work ; and I soon found that he was generally right. Great crimes are the work of great criminals, and great criminals are very few. And by "great crimes" I mean, not crimes that loom large in the public view because of their moral heinousness, but crimes that are the work of skilled and resourceful criminals. The problem in such cases is not to find the offender in a population of many millions, but to pick him out from among a few definitely known "specialists" in the particular sort of crime under investigation.

A volume might be filled with cases to illustrate my meaning ; but a very few must here suffice. It fell upon a day, for example, that a "ladder larceny" was committed at a country house in Cheshire. It was the usual story. While the family were at dinner, the house was entered by means of a ladder placed against a bedroom

window, all outer doors and ground-floor windows having been fastened from outside by screws or wire or rope ; and wires were stretched across the lawn to baffle pursuit in case the thieves were discovered. The next day the Chief Constable of the county called on me ; for, as he said, such a crime was beyond the capacity of provincial practitioners, and he expected us to find the delinquents among our pets at Scotland Yard. He gave me a vague description of two strangers who had been seen near the house the day before, and in return I gave him three photographs. Two of these were promptly identified as the men who had come under observation. Arrest and conviction followed, and the criminals received "a punishment suited to their sin." One of them was "Quiet Joe" ; the other, his special "pal."

Their sentences expired about the time of my retirement from office, and thus my official acquaintance with them came to an end. But in the newspaper reports of a similar case the year after I left office, I recognised my old friends. Rascals of this type are worth watching, and the police had noticed that they were meeting at the Lambeth Free Library, where their special study was provincial directories and books of reference. They were tracked to a bookshop where they bought a map of Bristol, and to other shops

where they procured the plant for a "ladder larceny." They then booked for Bristol and there took observations of the suburban house they had fixed upon. At this stage the local detectives, to whom of course the metropolitan officers were bound to give the case, declared themselves and seized the criminals; and the case was disposed of by a nine months' sentence on a minor issue.

Most people can be wise after the event, but even that sort of belated wisdom seems lacking to the legislature and the law. If on the occasion of their previous conviction, these men had been asked what they would do on the termination of their sentence, they would have answered, "Why, go back to business, of course; what else?" And at Bristol they would have replied with equal frankness. On that occasion they openly expressed their gratification that the officers did not wait to "catch them fair on the job, as another long stretch would about finish them"—a playful allusion to the fact that, as they were both in their seventh decade, another penal servitude sentence would have seen the end of them; whereas their return to the practice of their calling was only deferred for a few months. Meanwhile they would live without expense, and a paternal government would take care that the

money found in their pockets on their arrest would be restored to them on their release, to enable them to buy more jemmies and wire and screws, so that no time would be lost in getting to work. Such is our "punishment-of-crime" system !

"Quiet Joe" made a good income by the practice of his profession ; but he was a thriftless fellow who spent his earnings freely, and never paid income tax. "Old Carr" was of a different type. The man never did an honest day's work in his life. He was a thief, a financier and trainer of thieves, and a notorious receiver of stolen property. But though his wealth was ill-gotten, he knew how to hoard it. Upon his last conviction I was appointed statutory "administrator" of his estate. I soon discovered that he owned a good deal of valuable house property. But this I declined to deal with, and took charge only of his portable securities for money. The value of this part of his estate may be estimated by the fact that on his discharge he brought an action against me for mal-administration of it, claiming £5000 damages, and submitting detailed accounts in support of his claim. Mr. Augustine Birrell was my leading counsel in the suit ; and I may add that though the old rascal carried his case to the Court of Appeal he did not get his £5000.

The man lived in crime and by crime ; and old

though he was (he was born in 1828), and "rolling in wealth," he at once "resumed the practice of his profession." He was arrested abroad this year during a trip taken to dispose of some stolen notes, the proceeds of a Liverpool crime, and his evil life came to an end in a foreign prison.

When I refused to deal with Carr's house property I allowed him to nominate a friend to take charge of it, and he nominated a brother professional, a man of the same kidney as himself, known in police circles as "Sausage." A couple of years later, however, I learned from the tenants that the agent had disappeared, and that their cheques for rent had been returned to them. I knew what that meant, and at once instituted inquiries to find the man, first in the metropolis and then throughout the provinces; but my inquiries were fruitless. I learned, however, that, when last at Scotland Yard, the man had said with emphasis that "he would never again do anything at home." This was in answer to a warning and an appeal; a warning that he would get no mercy if again brought to justice, and an appeal to change his ways, as he had made his pile and could afford to live in luxurious idleness. With this clue to guide me, I soon learned that the man's insatiable zest for crime had led him to cross the Channel in hope of finding a safer

sphere of work, and that he was serving a sentence in a French prison.

No words, surely, can be needed to point the moral of cases such as these. The criminals who keep society in a state of siege are as strong as they are clever. If the risk of a few years' penal servitude on conviction gave place to the certainty of final loss of liberty, these professionals would put up with the tedium of an honest life. Lombroso theories have no application to such men. Benson, of the famous "Benson and Kerr frauds," was the son of an English clergyman. He was a man of real ability, of rare charms of manner and address, and an accomplished linguist. Upon the occasion of one of Madame Patti's visits to America he ingratiated himself with the customs officers at New York, and thus got on board the liner before the arrival of the "Reception Committee." He was of course a stranger to the great singer, but she was naturally charmed by his appearance and bearing, and the perfection of his Italian, and she had no reason to doubt that he had been commissioned for the part he played so acceptably. And when the Reception Committee arrived they assumed that he was a friend of Madame Patti's. Upon his arm it was, therefore, that she leaned when disembarking. All this was done with a view to carry out a huge



fraud, the detection of which eventually brought him to ruin. The man was capable of filling any position; but the life of adventure and ease which a criminal career provided had a fascination for him.

Facts like these failed to convince Dr. Max Nordau when he called upon me years ago. At his last visit I put his "type" theory to a test. I had two photographs so covered that nothing showed but the face, and telling him that the one was an eminent public man and the other a notorious criminal, I challenged him to say which was the "type." He shirked my challenge. For as a matter of fact the criminal's face looked more benevolent than the other, and it was certainly as "strong." The one was Raymond *alias* Wirth—the most eminent of the criminal fraternity of my time—and the other was Archbishop Temple. Need I add that my story is intended to discredit—not His Grace of Canterbury, but—the Lombroso "type" theory.

Raymond, like Benson, had a respectable parentage. In early manhood he was sentenced to a long term of imprisonment for a big crime committed in New York. But he escaped and came to England. His schemes were Napoleonic. His most famous *coup* was a great diamond robbery. His cupidity was excited by the accounts

of the Kimberley mines. He sailed for South Africa, visited the mines, accompanied a convoy of diamonds to the coast, and investigated the whole problem on the spot. Dick Turpin would have recruited a body of bushrangers and seized one of the convoys. But the methods of the sportsmanlike criminal of our day are very different. The arrival of the diamonds at the coast was timed to catch the mail steamer for England; and if a convoy were accidentally delayed *en route*, the treasure had to lie in the post office till the next mail left. Raymond's plan of campaign was soon settled. He was a man who could make his way in any company, and he had no difficulty in obtaining wax impressions of the postmaster's keys. The postmaster, indeed, was one of a group of admiring friends whom he entertained at dinner the evening before he sailed for England.

Some months later he returned to South Africa under a clever disguise and an assumed name, and made his way up country to a place at which the diamond convoys had to cross a river ferry on their way to the coast. Unshipping the chain of the ferry, he let the boat drift down stream, and the next convoy missed the mail steamer. £90,000 worth of diamonds had to be deposited in the strong room of the post office; and those diamonds ultimately reached England in Raymond's posses-

sion. He afterwards boasted that he sold them to their lawful owners in Hatton Garden.

If I had ever possessed £90,000 worth of anything, the government would have had to find some one else to look after Fenians and burglars. But Raymond loved his work for its own sake; and though he lived in luxury and style, he kept to it to the last, organising and financing many an important crime.

A friend of mine who has a large medical practice in one of the London suburbs told me once of an extraordinary patient of his. The man was a *Dives* and lived sumptuously, but he was extremely hypochondriacal. Every now and then an urgent summons would bring the doctor to the house, to find the patient in bed, though with nothing whatever the matter with him. But the man always insisted on having a prescription, which was promptly sent to the chemist. My friend's last summons had been exceptionally urgent; and on his entering the room with unusual abruptness, the man sprang up in bed and covered him with a revolver! I might have relieved his curiosity by explaining that this eccentric patient was a prince among criminals. Raymond knew that his movements were matter of interest to the police; and if he had reason to fear that he had been seen in dangerous com-

pany, he bolted home and "shammed sick." And the doctor's evidence, confirmed by the chemist's books, would prove that he was ill in bed till after the hour at which the police supposed they had seen him miles away.

Raymond it was who stole the famous Gainsborough picture for which Mr. Agnew had recently paid the record price of £10,000. I may here say that the owner acted very well in this matter. Though the picture was offered him more than once on tempting terms he refused to treat for it, save with the sanction of the police. And it was not until I intimated to him that he might deal with the thieves that he took steps for its recovery.

The story of another crime will explain my action in this case. The Channel gang of thieves mentioned on a previous page sometimes went for larger game than purses and pocket-books. They occasionally robbed the treasure chest of the mail steamer when a parcel of valuable securities was passing from London to Paris. Tidings reached me that they were planning a *coup* of this kind upon a certain night, and I ascertained by inquiry that a city insurance company meant to send a large consignment of bonds to Paris on the night in question. How the thieves got the information is a mystery; their organisation must have been

admirable. But Scotland Yard was a match for them. I sent officers to Dover and Calais to deal with the case, and the men were arrested on landing at Calais. But they were taken empty-handed. A capricious order of the railway company's marine superintendent at Dover had changed the steamer that night an hour before the time of sailing; and while upon the thieves was found a key for the treasure chest of the advertised boat, they had none for the boat in which they had actually crossed. But, *mirabile dictu*, during the passage they had managed to get a wax impression of it. We also got hold of a cloak-room ticket for a portmanteau which was found to contain some £2000 worth of coupons stolen by the gang on a former trip. The men included in the "bag" were "Shrimps," "Red Bob," and an old sinner named Powell. But the criminal law is skilfully framed in the interest of criminals, and it was impossible to make a case against them. I succeeded, however, by dint of urgent appeals to the French authorities, in having them kept in gaol for three months.

And now for the point of my story. Powell had left a blank cheque with his "wife," to be used in case he came to grief; and on his return to England he found she had been false to him. She had drawn out all his money, and gone off

with another man; and the poor old rascal died of want in the streets of Southampton.<sup>1</sup> He it was who was Raymond's accomplice in stealing Mr. Agnew's picture, and with his death all hope of a prosecution came to an end.

If my purpose here were to amuse, I might fill many a page with narratives of this kind. But my object is to expose the error and folly of our present system of dealing with crime. When a criminal court claims to anticipate the judgment of the Great Assize in the case of a hooligan convicted of some vulgar act of violence, the silliness and profanity of the claim may pass unnoticed. But when the "punishment-of-crime" system is applied to criminals of the type here described, the imbecility of it must be apparent to all. With such men crime is "the business of their lives." They delight in it. Their zest for it never flags, even in old age. What leads men like Raymond or Carr to risk a sentence of penal servitude is not a sense of want—that is a forgotten memory. Nor is it even a craving for filthy lucre. The controlling impulse is *a love of sport*, for every

<sup>1</sup> "Shrimps" also found that his "wife" had proved unfaithful. He disappeared, and I heard that he had filled his pockets with stones and thrown himself into the sea. Had the men been in an English gaol they would have communicated with their friends; but in Boulogne prison they were absolutely buried, and their women gave them up.

great criminal is a thorough sportsman. And in the case of a man who is free from the weakness of having a conscience, it is not easy to estimate the fascination of a life of crime. Fancy the long-sustained excitement of planning and executing crimes like Raymond's. In comparison with such sport, hunting wild game is work for savages; salmon fishing and grouse shooting, for lunatics and idiots!

The theft of the Gold Cup at Ascot illustrates what I am saying here. The thieves arrived in motor cars; they were, we are told, "of gentlemanly appearance, and immaculately dressed," and they paid their way into the grand stand. The list of criminals of that type is a short one; and no one need suppose that such men would risk penal servitude for the paltry sum the cup would fetch. A crime involving far less risk would bring them ten times as much booty. For no winner of the cup ever derived more pleasure from the possession of it than the thieves must have experienced as they drove to London with the treasure under the seat of their motor car. For it was not the lust of filthy lucre, but the love of sport that incited them to the venture. There are hundreds of our undergraduates who would eagerly emulate the feat, were they not deterred by its dangers. And a rule of three

sum may explain my proposal to put an end to such crimes. Let the consequences to the professional criminal be made equal to what imprisonment would mean to a "Varsity" man, and the thing is done.



## CHAPTER VII

How many criminals are there in England who possess not only the ability but the means both to plan and to carry out important crimes? Before I published my first *Nineteenth Century* article in February 1901 I used the resources of my department at Scotland Yard to obtain an answer to this question, and as the result a list of ten names was submitted to me. My first impulse was to reject it as ludicrously inadequate. But I wished the list to be limited to men who had not merely the genius to organise great crimes, but the money to finance them; and after full inquiry I was inclined, instead of adding to it, to query some of the names which it contained.

And if I could give the whole life story of some of these master criminals, the amazement and indignation of the public would be unbounded. But this would need free access to the confidential records of my old department, and the unstinted help of my old officers. And even this would not afford all the materials needed to enable us to frame an estimate of what these men cost the country during their evil lives.

The next class of criminals to claim our attention is composed of those who, though able and skilful, have not attained to leadership. The professionals of this second rank are of course more numerous. But they are well known to the police, and a single wing of any large prison would hold them. The reader perhaps may incredulously ask whether I mean that shutting up a few score of these criminals would make a sensible difference in the crime of the country. Yes, this is precisely what I mean. And I claim no credit for knowing what I am writing about; for during my reign at Scotland Yard I acted as administrator of most convicts of this class. I am not juggling with statistics. My opinions are based on facts and a knowledge of the *personnel* of the fraternity; and I assert with confidence that new methods of dealing with these men—methods such as would command the approval of five-sixths of the community—would make an enormous difference in the tale of organised crime against property in England.

The next class of criminal is admirably described in the second paragraph of Sir Alfred Wills' letter.<sup>1</sup> Sir Alfred says that they are "in no sense habitual criminals." But in the legal sense that is precisely what they are. A humane

<sup>1</sup> Page 34, *ante*.

and strong Judge may discriminate between such offenders and the professionals, but the law at present recognises no such distinction. Indeed, as a matter of fact, some of these unfortunates, who (as Sir Alfred says) "deserve as much pity as punishment," have a worse official record than men like Raymond and Carr, and therefore ought to receive severer sentences.

This last remark applies also to yet another, and a still larger, class of criminals — weak, neurotic creatures who are incapable either of pursuing a course of honest labour, or of appreciating the deterrent influence of punishment. Sinking helplessly into a life of crime, their fate under our present "humane" methods, is to suffer a long series of terms of imprisonment, broken by brief intervals of misused liberty, until they sink into the grave. Our treatment of them is absolutely barbarous. And, moreover, it is utterly false in principle.

For the extermination of the unfit is one of the plainest of natural laws, and such laws cannot be violated with impunity. Not only Christianity but civilisation may teach us to modify, and even to suspend their operation—the hospital, and the prison itself, are designed to that end—but we must be careful to observe their aim and purpose. While therefore we do well to protect lives which

nature would give up to destruction, we must, in so doing, guard against the evils which the natural law is intended to avert. It behoves us to take adequate measures to prevent the unfit from preying upon the community, or contaminating their associates; and, I would add with emphasis, from reproducing their kind. It is right to save them from the gallows, but our present methods of dealing with them are not a reasonable alternative. On the contrary they are unintelligent and mischievous in the extreme.<sup>1</sup>

If a criminal be only wicked, and can be deterred from crime by fear of its consequences, drastic measures would be positively merciful. But in the case of the weak let us be done with this senseless and brutal "punishment-of-crime" system. Stern severity may be justifiable in our treatment of the wicked; but let the weak be placed in confinement in a state of social tutelage for the protection of society and for their own good. The majority of commitments for criminal offences are of persons of this class. The prison has no terror for them, and as now administered its discipline tends to make them more and more unfit for life in this world, while it seems to

<sup>1</sup> While writing this, a letter reached me from a friend, asking advice in the case of a "perfectly hopeless" man, aged forty-three, who had been imprisoned thirty times, and had been occasionally committed to pauper lunatic asylums. The case is typical.

destroy all hope of a better life beyond. Some among them are probably intractable and hopeless; but the great majority of such offenders might, in an asylum prison, be trained to lead not only useful lives, but brighter and happier lives than they can know in the vile slums which are their usual haunts when at liberty. I may add that prisons of the kind would be self-supporting, for it is the "short sentence craze"—the delight of sham philanthropists—that makes our gaols a charge upon the public purse.

The aliens question claims notice in any treatise upon crime. But, owing to the exigencies of politics, that question has unfortunately been dragged into the arena of Party; and as the result, evils which the Aliens Act, if honestly and intelligently administered, would mitigate, are working almost unhindered. In the past this country has been an asylum for the oppressed of every land: it is now becoming the common cesspool of Christendom. But just at the present it is idle to expect a fair hearing upon the subject. I pass therefore to another branch of the crime problem, which always commands sympathetic consideration; I refer to the rescue of the young. Their treatment in prison I will not discuss; first, because details of prison administration are outside the scope of these pages, and secondly,

because the work of the Prison Commission in this connection renders it unnecessary. Sir Evelyn Ruggles-Brise's efforts to make the prison a real reformatory in the case of youthful offenders deserve public recognition, encouragement, and support.

But there is another phase of the question which is strictly germane to my main purpose. I advocate reforms that will reduce the ranks of the army of crime ; I plead also for measures that will stop the recruiting. It is well that the young who are caught in the meshes of the criminal law should be treated humanely and intelligently, but it is still better that we should save them from becoming thus entangled. The right of every one, including the street Arab, to do as he likes, is nowadays called "liberty." And this false belief has tended to the growth of "Hooliganism" in most of our large towns ; and "Hooliganism," if unchecked, naturally leads to crime. As a matter of fact, indeed, the sort of youth who formerly dreaded the police court and the gaol now regards a conviction and sentence as a hall-mark of heroism.

If I may here digress for a moment, I would suggest to those who object to punishments which they classify as degrading, albeit they afford an alternative to imprisonment in the case of youth-

ful offenders, that no punishment degrades an offender so thoroughly as one that allows him to make his crime a subject of boasting. One of the Dublin magistrates in my early days was a man of great force of character, but quite unconventional. On one occasion when a youth came before him on some petty charge, the police gave a bad account of the lad, declaring that he had a chance of doing well if he wished, but that he was going wrong, and was likely to become a regular criminal. To the amazement of a friend who was sitting with him on the bench, the magistrate, in blood-curdling language, sentenced the prisoner to be flogged in the yard adjoining the court. He then brought his friend into his private room, from the window of which they saw the prisoner standing by, looking half dead with fright, while two burly constables were inspecting instruments of flagellation, borrowed, I suppose, from some "Police Museum" in the neighbouring station. But the yard gate had judiciously been left open—for the *dramatis personæ* were all Irish, and understood their parts—and, seeing his chance, the lad made a dash for freedom and escaped. "Now," said the magistrate, "we've saved that boy; we'll never see him here again."

I will not insult the intelligence of the reader

by explaining the moral of my story. And I will only add that if offenders of this class were punished in the manner that public schoolboys are punished, and then turned out at once to rejoin their companions, an appearance in a police court would cease to be a matter for boasting !

But, to resume, the right of such boys to become street Arabs is carefully guarded. And when wilful idleness brings them to want, the philanthropy of the day steps in to thwart the operation of the Divine law that "if a man will not work, neither shall he eat." I am told by friends who have long experience of philanthropic efforts on behalf of "Hooligan" lads that their work is becoming more difficult and discouraging, and that the change is due in part to the provision of night shelters for the destitute, the special hardship of a life on the streets being thus removed.

I am heretic enough not to accept the theology of Dr. Watts's hymn about Satan and "idle hands"; for my knowledge of human nature satisfies me that, given the "idle hands," the "mischief" will follow without any supernatural help. If there be "abundance of bread," it will probably be in the way of vice; but with the pauper it will inevitably take the form of crime. And this is the practical answer to the application in this sphere of the stock objection about



one law for the rich and another law for the poor. The rich idler does not concern us here. He may be left to go his own way. So long as he pays taxes and keeps the law, society has no business to meddle with him. But the pauper idler is a public danger. And the recognition of the danger, and of the right of the community to deal with it, is the first step to the suppression of "Hooliganism."

However it be explained, the fact is certain that a growing spirit of rowdyism prevails among youths of a certain class. And the matter is one which demands earnest attention. But youths who are earning their living, and who have to be up early and to work all day, will not take to highway robbery in the small hours of the morning. And here I am dealing with the movement only on its more pronounced and dangerous side. But in this, its graver aspect, the tap root of the evil is what I have indicated. And the most distressing reflections to which it gives rise are, first, the ruin of the unfortunate lads, and the waste of useful energy; and, secondly, the ease with which they might be rescued.

For not only is prevention *better* than cure, but it is vastly more easy. Why should we tolerate a state of things which is fraught with such danger? Why should a youth in his teens be

allowed to live in idleness in the streets? But, it will be asked, has not a "Hooligan" a perfect right to use the streets so long as he does not break the law? Undoubtedly he has, *at present*. But society has a right to make a law which will limit that right: a law which will make it unlawful for any able-bodied youth who has no visible means of subsistence to make the streets his home. I say "youth" because I do not wish to embarrass the consideration of the subject by introducing "collateral issues."

In cases of this kind there should be no commitments to prison. A remand to the workhouse might be sometimes necessary, but a court of petty sessions should be empowered to send the lad direct to a training-ship, or to some suitable institution. Seamen are wanted for our Navy, and many of these youths would make excellent sailors if only they were rescued in time.

Our present system of dealing with them is not only stupid but wicked and cruel. It might be compared with leaving dangerous places unguarded, and then providing ambulances and hospitals to deal with resulting casualties. The "right Divine" of these unfortunate boys to become "Hooligans" is recognised by law, and then when the inevitable result is accomplished we make praiseworthy efforts to repair the mis-

chief. Were the mischief not so serious and deplorable, it would be intensely amusing to hear people talking "Habeas Corpus" and the British Constitution generally, in defence of the right of pauper youths in their teens to loaf about the streets all day and half the night. If such lads will not or cannot find work to do, work should be found for them before they drift into crime, and they should be made to do it.

Neither mawkish sentiment nor a spurious philosophy ought to be allowed a hearing in this matter. It is not a case of committing a wrong upon the few in the interests of the many, or of doing an injustice to the poor in the interests of the rich. What is here advocated is that those whom it is both the duty and the interest of the community to rescue should be rescued promptly and in the most practical way. In the vast majority of cases, youths who become street loafers at sixteen are either street loafers or criminals at twenty. Every true philanthropist, therefore, should hail this suggestion with approval. And those who take a sterner and more selfish view of such questions may be influenced by the consideration that our present system involves a wanton waste of lives that might be made useful to the community.

Whether do we confer a benefit, or commit a

wrong, upon a lad who has no prospect in life but the workhouse or a gaol, if we take him from the streets, and give him the opportunity of entering on a useful, and possibly an honourable, career? The question admits of only one answer. Why, then, should we reserve this benefit for criminals, to the neglect of those who are only unfortunate or foolish? Let magistrates be empowered to deal with any lad between the ages, say, of sixteen and twenty-one, who habitually frequents the streets or highways and has no visible means of subsistence.

I purposely abstain from discussing the details of this *projet de loi*. Once it is accepted, it will become important to consider its relation to the Vagrant Acts, and to enactments now in force for dealing with young persons. But at this stage the only questions which most people will press are, whether such a scheme could be easily administered, and whether the results would be likely to prove satisfactory.

As regards the former point, I apprehend that no one who has experience of police or magisterial duty would see any difficulty. Under the Prevention of Crimes Act, the charge against an habitual criminal of getting his livelihood by dishonest means is refuted by giving the name of an employer. And if a youth has no parent to

claim him, and cannot appeal to any one who employs him, there is no risk of either injustice or hardship in concluding that he is an Ishmaelite.

And as regards results, it is, I presume, the future of those who would be dealt with under such a law that the inquirer has in view. That an element of street mischief and danger would be sensibly reduced no one will doubt. And the extent of the relief would not be measured by the number of the cases that a statistical return would show. The general and automatic effects of a law of the kind are often much greater and more important than its tabulated results would indicate. If the streets, instead of being the happy hunting-ground, were made a "Tom Tiddler's ground" for idle loafers of this class, the recruiting for "Hooliganism" would be checked. Boys fresh from school, who are now easily led to join the evil ranks, would be going about, cap in hand, seeking for employment.

Then as to the future of those who would be thus rescued. In the criminology of the Continent the "type" theory prevails. But, so far as our own country is concerned, it is refuted by the experience of practical philanthropists. It has been abundantly proved by work done among destitute lads in London during the last quarter

of a century that the children even of vicious and degraded parents, if taken in time, can be trained to live clean and useful lives. Indeed, the failures are comparatively so few that no special theory is needed to account for them. True it is that the great majority of cases from which this experience is derived are removed from their evil environment in early life. But if the "type" theory were well founded, this fact would be immaterial; and I may add that in recent years increased efforts have been made to deal with youths of the hobbledehoy class, and the results have been encouraging. Indeed, the institutions which deal with such cases might well be utilised under the new law.

Moreover, it is a mistake to suppose that boys who take to the streets are always the children of bad people, or that they themselves have more than their share of "original sin." Whatever the reason, there are many honest and respectable folk among the working classes who allow their sons to get beyond their control, and, while a committal to gaol is felt as a cruel blow in such a family, State intervention in the way I advocate would be welcomed by the parents. And many a lad goes wrong owing to the possession of qualities that make him exceptionally interesting. A high-spirited boy, with a thirst for

adventure, developed and perverted by reading "penny dreadfuls" and frequenting low - class theatres, is easily carried away by the excitement of a life on the streets. And this is just the sort of boy who, if allowed to go to ruin, is apt to become a dangerous criminal, though he has in him the making of a splendid sailor or soldier. But once the gaol brand has been stamped on him, such a career is practically closed to him.<sup>1</sup>

<sup>1</sup> This scheme has been denounced as a proposal to degrade the Services by recruiting for them from the criminal classes. The intelligent reader will appreciate the falseness and silliness of such a criticism.

## CHAPTER VIII

IN Mr. Barry O'Brien's *Life of Lord Russell of Killowen* special interest attaches to the story of the early struggles of the future Lord Chief Justice. So friendless and unknown was he when he came to London as a law student that he had to appeal to a stranger, an East-End Irishman, to "sign his bond" for admission to Lincoln's Inn, and at that time it was that the following incident occurred. I give it in the biographer's own words:—

"One evening Russell was at the Haymarket Theatre. On the fall of the curtain he stood at the corner of the pit to have a look at the house. Two men were near him. Suddenly some one cried out, 'I am robbed; I have lost my watch, and these three men have it!' The idea struck Russell, 'If one of these men has the watch, he may slip it into my pocket.' He put his hand behind, pressed his pocket, and exclaimed: 'Good Heavens! they have done it; there is the watch!' The police arrived upon the scene; the two men and Russell were walked out. 'What can I do?' thought Russell; 'no ex-



planation that I can give will get rid of the fact that a stolen watch is in my pocket!'"

The trick which Russell dreaded is a common one with thieves. Some years ago at a church bazaar in Lincoln, held under Episcopal patronage, the alarm was given that a thief was at work, and two of the visitors had lost their purses. Neither the thief nor the stolen money could be traced, but the empty purses were afterwards found in the Bishop's pocket! Now, in the case of any person of name or fame such an episode would be matter only of amusement. But not so with a friendless and impecunious stranger; and, if Mr. O'Brien has the soul of a novelist, it must have cost him a pang to be obliged to write the sequel: "He put his hand into his pocket and found—his snuff-box! One of the other men had the watch." I resent such a prosaic ending to such a dramatic incident, and I picture to myself the young law student at Vine Street Police Station contemplating the wreck of all his dreams of wealth and fame when the police searcher dives into his pocket and produces the incriminating watch. And as, albeit I am romancing, my object is most practical, I abandon at once the Russell date of 1856, and suppose the event to happen in this present year of grace.

Here then is an innocent man charged with a grave offence, and seemingly compelling evidence of guilt is found upon him. "Compelling evidence," I say; for, though the facts are similar to those of the Bishop's case, the circumstances are wholly different. Poverty is no crime, but, human nature being what it is, it tempts to crime; and, therefore, facts that would carry no weight in the case of a man of means and of known position or character, have a terrible significance in the case of one who is penniless and friendless.

And let it not be forgotten that there are offences of such a kind that to plead the possession of a balance at the bankers, and of a wide circle of friends, affords no answer to them. I here recall an incident that happened to myself seven-and-thirty years ago. Being detained in London by official business far on into the summer, I took rooms at Norwood. Arriving late one night at the Crystal Palace Station, I made for my lodgings "at the double." I soon discovered that I was being pursued by a constable. Two ladies who had travelled in the same train accused me of having grossly insulted them. I returned to the station, and there my accusers identified me as the delinquent, but absolutely refused to prosecute the charge. They

were in such an hysterical condition, indeed, that they could scarcely be induced to look at me at all. As I had travelled in a compartment by myself, there was only my own word against theirs; and if they had pressed the charge I do not see how I could have escaped. In any case, my position was a perilous and painful one; and but that a happy accident enabled me to put the police upon the track of the real offender, the stigma of the accusation might have rested on me to the present hour.

This digression will assist to enforce my warning that there are charges to which neither money nor friends can supply an adequate defence. But I return to my impecunious and friendless law student, from whose pocket a stolen watch has just been extracted. He protests his innocence of course; but every thief does that, and one who has studied the part does it with special plausibility. He appeals to Lincoln's Inn and his East-End surety; but the Inn and the surety know nothing save that he is an indigent Irishman, and that could scarcely be accepted as a defence in a case of felony. The charge is taken as a matter of course, and in the circumstances no police officer who knows his business would hesitate for a moment to lock him up.

Now, up to this point he is merely the hapless victim of untoward circumstances. No human wisdom or foresight can prevent such blunders. Here is an innocent man charged with a serious crime in circumstances which demand his being detained until he can be brought before a magistrate. Where, and how, is he to spend the four-and-thirty hours from Saturday night until the sitting of the court on Monday morning? At this stage we must distinguish between the legitimate requirements of the law and the manner in which these requirements are carried into effect. If we could foresee that he is a Lord Chief Justice in embryo it is hard to say what heroic action might not be taken; but, the facts being as they are, a police-station cell is his lodging for the two nights and the whole of Sunday. Now, were I writing a romance, my changing the date to the present year would be a blunder. If Charles Russell had been really locked up on the night of his adventure, his account of the Vine Street cells of those days, and of the way in which prisoners were treated, would have been indeed a thrilling story. But in all these matters we are much in advance of half a century ago. The question here, however, is a far wider and more important one than that of the actual condition of the police cells and the "lock-up"

houses of this country. If we might assume that they were generally equal to the best of them, and in keeping with our modern ideas—a wholly baseless supposition—it would only clear the ground for a discussion whether modern ideas take account of cases of the kind I have indicated.

The difficulties of the problem are undoubtedly real. Ordinary police cells are fairly suited to ordinary cases, and the vast majority of cases are ordinary. Then, again, we are confronted here, as in almost every question of penology, with pseudo-maxims that are supposed to be an end of controversy. For it is not merely in the religious sphere that the minds of men are governed by venerable errors and superstitions. Among these sham maxims a prominent place must be given to the pretentious aphorism that the law presumes every one to be innocent till he is proved to be guilty. As a matter of fact, this is either a useless platitude or a mischievous error. An error, because it is in opposition to the Prevention of Crimes code, to which we owe so much in our present-day war with criminals; and mischievous, because in claiming equality of treatment of all untried prisoners it operates to the prejudice of the really innocent, just as promiscuous charity hurts the deserving poor. The common-sense of

the community is on the side of the growing practice of discriminating between those who have been previously convicted and those who have no criminal antecedents.

And, even within the former class, equality of treatment may be a practical outrage. I recall a Dublin story about a man whom I knew by repute long ago as being both a dandy and a scamp. Locked up over-night for some after-dinner escapade, he found himself next morning in the police van beside a fat and dirty "drunk and disorderly" female, who lurched heavily against him with every jolt of the conveyance—in those days the vans were not fitted with separate compartments. Roused at last by his indignant and peremptory remonstrances, she hiccupped back, "Shure, I've as much right to be here as you!" A verminous tramp, or a chimney-sweep fresh from his work, has "as much right" to be in a lock-up as the cleanest and best-dressed man that ever knocked down a policeman; but whether it is right to compel the dandy to rub up against such neighbours is another matter. The plain fact is that fear of the well-known taunt about one law for the rich and another law for the poor is responsible for much injustice and wrong. *Summum jus, summa injuria*, is a genuine maxim that may be diverted to help us here. Perfect equity is impossible in

human punishments, but our efforts should always tend in that direction ; and an environment which may be to one person so commonplace as not even to interest him may be a cause of real torture to another.

But all this, though it bears upon my main subject, is none the less a digression. The fact which claims our attention is that absolutely innocent persons are sometimes charged with crime. Such cases are happily rare, but that is no reason for ignoring them. And we have the further fact that in a considerable number of cases accused persons are entitled to be regarded as innocent until their guilt has been legally established. I have already noticed that the Prevention of Crimes Acts practically shift this presumption in certain cases. In one sense, of course, and for certain purposes, the presumption always obtains. Indeed, one difficulty in promoting a reform such as I am advocating will be the strong prejudice which certain minds always feel against any one who is brought up on a criminal charge. I remember an Irish Bar story of a provincial jury to whom the Judge left a hopelessly shattered case with the remark that he presumed they would have no difficulty in dealing with it. Without a moment's hesitation they found the prisoner guilty; and when the

Judge asked them with amazement what they meant, the foreman exclaimed, "But, whatever would he be here for, my Lord, if he wasn't guilty?"

There are some people who are ready to lynch any one who is charged with crime, just as there are other people whose maudlin sympathy for criminals seems only to be increased by proof of their guilt. But the question here is whether our present arrangements and methods in dealing with unconvicted prisoners commend themselves to fair and sensible men, who view the subject without prejudice or passion, and with full knowledge of the practical difficulties of dealing with it. We may clear the ground at once by admitting that, if there must be equal treatment for all untried prisoners without distinction, no important changes are practicable. But it would be in harmony with the principle of the Prevention of Crimes Acts to hold that an accused person shall be presumed to have no criminal antecedents unless there be reason to believe the contrary. And this "unless" involves no serious difficulty. Questions of the kind, which a dozen faddists round a table would spend a week over, are daily decided wisely and well by experienced police officers in the course of their ordinary duty. Mistakes will occur of course. But the risk of



a few unpreventable blunders is no valid objection to important reforms.

An actual case is always apter than a hypothetical one. Some years ago complaints of watch-snatching in the neighbourhood of Bond Street led to special measures to deal with the offence. I sent a couple of men there, made up for the part, to catch the thieves. Within a day or two one of these officers heard a "hue and cry" in an adjoining street, and met a man bolting round the corner. He joined the fugitive, and in thieves' slang asked him the cause of his flight. "I've sneaked a red 'un," he promptly replied; which, being interpreted, meant that he had stolen a gold watch. As a true "pal" the officer offered to keep it for him, and the offer was gladly accepted. All this was a matter of seconds, and the sequel does not need telling. But will any one outside an idiot asylum suggest that the thief should have been regarded as innocent until his guilt was proved in a Court of Justice? You might as well hold that the police are to assume that a man who is locked up for drunkenness is sober until a magistrate has decided upon the evidence that he was drunk. If common-sense is given scope it makes short work of doctrinaire maxims and theories. They remind one of that very old story of the man who was wounded in a sea fight and pronounced by

the naval surgeon to be dead. He recovered consciousness just as he was about to be thrown overboard, and taking in the situation in an instant, he exclaimed that he wasn't dead. "Just like you," said the petty officer who had charge of the job—"just like you; as if *you* knew better than the doctor!" There is sometimes a direct way of getting at facts which brings more moral certainty even than the authorised way.

In all ordinary cases where a person is accused of crime there is no moral doubt that he committed the offence charged, and the only question open is whether legal evidence is forthcoming to ensure his conviction. But from time to time cases of another kind occur, and persons are charged with crime in circumstances which entitle them to be regarded as innocent until their guilt is established, but which require also that they shall be detained pending the decision of a competent court. And ought not the imprisonment of such persons to be so regulated as to avoid all unnecessary suffering or humiliation? To which question I will bluntly add another: Will any well-informed person pretend for a moment that our present methods comply with these conditions?

My experience in prison and police administration ought to be a guarantee that I realise the difficulties of making adequate reforms in this

connection. But difficulties are not insurmountable. In rural communities the chief difficulty would be in making and maintaining provision for cases which would be very exceptional and rare. But in great centres of population difficulties of this kind would be of no account. In London the whole problem would resolve itself into a question of expense. There is no reason why certain police stations should not contain suitable accommodation for such cases. And if after the police-court hearing, the accused, though remanded in custody, is still found to be entitled to the presumption of innocence, there is no necessity for his being carted to gaol in the same van with felons and "drunks," and still less reason why, when he reaches the gaol, he should be immured in a punishment cell.

If access must be refused to his friends, there is all the more reason for giving him the relaxation of light and air, and a sight of nature or life beyond the prison walls. The Civil Service clerks of the last generation used to beguile the tedium of their many idle hours by counting the cabs that passed up and down Whitehall, or the horses of one colour or another. But even this recreation is denied to an unfortunate prisoner who is supposed to be as innocent as a Government clerk.

And let no one suppose that this is a class question. Of course the treatment of an untried prisoner ought in certain respects to depend on his ordinary habits of life. But in this matter it is not a question of distinguishing rich from poor, but the innocent, whether in fact or by presumption of law, from those who have been convicted of crime. Under our present system, money can obtain for untried prisoners some, at least, of the comforts they are used to in ordinary life, and a supply of books may afford a cultured mind not only relief but enjoyment. But what of those who have no such resources? I have known of prisoners who cared so little for the discipline of a *real* "punishment cell"—a cell absolutely dark, and with no furniture but a plank to lie on—that they have pretended to be sorry when their punishment term expired. But there are many among the toiling classes who have active brains and highly-strung nerves; and to such, incarceration in a semi-dungeon would be more maddening even than to persons who could find the relief which a well-stored mind affords.

There are only two practical questions involved in the reform I am advocating. The one is the expense of the necessary structural alterations in our prisons; and the other the safe custody of

the prisoners. The former question does not concern me here. And, as for the other, no one can imagine that there would be any difficulty in furnishing a window with bars that would baffle even an expert prison-breaker. Indeed, I might press the point to a grotesque extreme, and suggest that a prison window might be made a model of æsthetic art. On one occasion, when the House of Commons prison rooms were being got ready for use — it was Mr. Bradlaugh who was expected to qualify himself for residence in them — the late Serjeant-at-Arms brought me with him to inspect them. I was surprised and charmed at finding a prison that had nothing of the prison about it. And Sir Ralph Gosset told me that when he was first appointed to the House, his official residence not being ready, he lived in the prison rooms for months, and found them both comfortable and pleasant. But this by the way. The plea that the safe custody of prisoners can be assured only by the use of cells is preposterous. And in the case of a prisoner of the class here in question, if it be unnecessary it is unjustifiable.

## CHAPTER IX

THE preceding chapter opens up a wider question than the treatment of untried prisoners. As a matter of fact, with some few exceptions, our prisons contain only *punishment* cells—for such is the proper designation of ordinary prison cells. It is not that they are not large enough. They are larger and better ventilated than the “study” rooms provided for our boys in the older buildings of some of our public schools. But what distinguishes a prison cell from every other sort of apartment designed for a human habitation is that all view of external nature such as might soothe and possibly elevate the mind is with elaborate care excluded. The treatment of prisoners in former times was barbarous, but it was at least intelligent. Its whole purpose was punishment, and the punishment was thorough and drastic. But in this shallow and conceited age we pride ourselves that we are not as our fathers were. Our great aim in prison discipline is the reformation of the offender; and with a stupidity that would be amusing if the matter were not so

serious we wantonly deprive a prisoner of the good influences that God's world of nature is so well fitted to exert upon him. "The heavens declare His glory, and the firmament showeth His handiwork ;" but our prison cells are specially designed to shut out their testimony ; and, with the smug Pharisaism so characteristic of the age, we pride ourselves on our philanthropy, and boast of supplying our criminals with goody books and religion (turned on like the water and the gas) to elevate and reform them.

I am no advocate for pampering and petting a criminal. It is right that the very furniture of his cell, and the routine of his daily life, should unceasingly impress on him that crime brings punishment. But to shut him up in a cell where he cannot look out upon land and sky is on a par with flogging him. I would place him in a punishment cell, and flog him too, if he deserved it and some competent authority directed it. But to make this his daily discipline is unworthy of an enlightened age. I suppose there are men so constituted or so brutalised that the want of a window would be a matter of indifference to them. As for myself, I think it would drive me mad. I have already committed the indiscretion of telling how near I came to being locked up on one occasion. I will cap my indiscretion

by narrating how I was actually locked up upon another occasion.

When the Irish Fenian outbreak occurred in March 1867, and the Special Commission which followed it was approaching, the case for the Crown against the principal offenders was found to be weak through want of certain technical evidence which our law of conspiracy requires. The Government sought my aid in the matter, and I set myself to the task of obtaining the necessary evidence. Armed with a permit to see all the prisoners without any restrictions, I repaired one morning to Kilmainham Gaol. I took the Governor into my confidence, though no one else was in the secret; and after visiting a number of the men, and taking notes of their complaints or appeals, I left the prison as openly as I had entered it. But, returning by the Governor's house during the officers' dinner-hour, I was smuggled unobserved into the cell of the man I indicated.

I remember well the Governor's remonstrance when I enjoined upon him not to come back until after locking-up time. I was determined that neither the public, nor even the police, should get an inkling of my mission; and so I refused to listen to the Governor's warning that I was entering on an ordeal of a kind I little realised. So long as I was occupied with the task that had



brought me there, I was quite indifferent to the surroundings. But my work was done three hours before the time I had myself fixed for my release ; and for those three long hours I had experience of a prisoner's lot. The cell was larger than a compartment of a railway carriage, and my seat was no harder than in those days the L. & N.-W. Railway Company provided for their second-class passengers, as I many times proved in my trips to London to "keep my terms" for the Bar. Why, then, were three hours in that cell such an ordeal ? For a real ordeal the experience proved ; and it required all my powers of self-command to dissemble my delight when my friend the Governor re-appeared. The one and only thing which distinguished that cell from any other barely furnished closet room was that the aperture that passed for a window was, as in every prison cell, placed high up near the ceiling, and obscured glass prevented even the sight which it might otherwise have given of a few square yards of sky. I fancied as I sat there that if only it were night, and I had artificial light, I could forget that miserable window and be at my ease ; but in the daylight I could not get away from it. I seemed to be in a pit. There was no want of air, and yet I felt smothered. My nerves would not have long stood the strain of it.

And yet in my case there were none of the elements which add bitterness to imprisonment. I was not a prisoner. My thoughts could dwell on my position not only without misgiving or alarm, but with the utmost satisfaction. My mission had succeeded beyond my expectations. My prisoner had not only given me all the evidence required to make the coming trials a success, but he had made a full disclosure of all he knew about the Fenian leaders in America. He had come to Ireland in good faith, relying on the truth of all they had told him, and his indignation was deep at discovering that they were a set of lying swindlers. Instead, therefore, of having any cause for depression, I had good reason to feel elated; for I had in my pocket not only a satisfactory brief for the Law Officers, but a very valuable report for the Government—a report which Lord Mayo brought with him to a Cabinet Council on the following Saturday. And notwithstanding all this, I suffered from a feeling of depression which deepened as the time went on, and which in my case at least would have ultimately become unbearable.<sup>1</sup>

<sup>1</sup> As malicious tongues are glib, I ought not, perhaps, to turn away from this incident without saying, first, that my position in the matter was that of a barrister, called in to assist the Crown in a confidential capacity. When the outbreak occurred I was on circuit, and a telegram from the Attorney-General recalled me to

Now on what ground can we justify the use of cells such as I have described, in the case of those who are entitled to the presumption of innocence? Indeed, I might go further and ask whether it be politic or right to make use of them for the imprisonment of those who, though convicted of crime, are committed expressly with a view to their amendment and reformation.

When a few years ago I went the round of all the Paris prisons, nothing so impressed me as the manifest lapse from humanity and common-sense to stupidity and barbarism which marked the transition from the oldest of their gaols to the newest and most modernised. In the latter, the cells were built on the plan with which we are familiar, and of which we are so proud in England. The whole structure pays homage to the stupid punishment-of-crime cult, together with the old Pagan gnosticism which men once mistook for a transcendental phase of Christianity, and which ensnared them by the delusion that asceticism meant saintship, and that the means by which

Dublin. But I did not hold a brief at the trials which followed. And, secondly, I should like to add that the prisoner referred to regarded me ever afterwards as a true friend. He used to write to me at intervals, and the last letter I had from him gave proof that the lapse of years had not lessened his gratitude to me. I am of opinion that if a criminal becomes penitent, his chief duty is not to his fellow-criminals, but to his fellow-citizens and the State, and I never despise a man who acts on this principle.

it was obtained was complete isolation from the external world. After I left the Governor's apartments I never got one glimpse of the open sky until, my visit over, I passed from the prison into the glorious sunshine of a summer day. In the older prison, which was then devoted to females, I came upon groups of young women sitting at their appointed tasks. Through the open windows, which, though heavily barred of course, were wide and large, the inmates looked out on trees, and grass plots, and flower beds, bright with sunlight, and enlivened with more birds than I ever saw in any other open space in Paris. And I should add, with each group there was, in addition to the prison officer, a lady visitor who read to them as they worked. It chanced to be one of the hours set apart for that special relaxation.

Here I anticipate an outcry in certain quarters against making prisoners too comfortable, and making prisons attractive. The danger is a real one, and care must be taken to avoid it. But there are other ways of making prison life a punishment than by shutting out light and sunshine. Moreover, I maintain that to punish criminals by deliberately depriving them of influences fitted to soften and humanise them, is not only false in principle, but practically barbarous. If sensible people had sense enough

not to be swayed by sentimental nonsense, legitimate punishments of a wholesome kind would be used more freely, especially with the young; and prison discipline might be modified with a view to benefit the prisoner and to make him more fit, instead of, as so often at present, less fit, for his return to liberty.

But behind these general controversies there looms a question of a most definite and practical kind which should be kept steadily in view in regard to every commitment: With what object is the accused sent to prison? It cannot be deemed unreasonable to expect that any man who holds the important and responsible position of a magistrate or a judge shall be prepared to answer that question in the case of every prisoner who leaves his court for a gaol. And according to the answer given the treatment of the prisoner should be regulated. I do not mean, of course, that each individual should have a separate discipline any more than that he should have a special diet; but that prisoners should be classified according to the main purpose with which they are committed, and that the discipline should be aimed at the realisation of that purpose. I am not overlooking recent changes in this direction, especially in regard to youthful offenders. On the contrary, the knowledge of them leads me to

the belief that official sanction would be gladly given to still more thorough reforms if public opinion could be educated to the point of demanding them.

And I would add in perfect sincerity that when it comes to working out the details of such reforms, the present Prison Administration contains men who are better fitted for the task than I can pretend to be. The difficulty depends largely upon the way the public allow themselves to be drawn this way or that by petty cliques of noisy agitators—the advocates of unreasoning severity on the one hand, and of unreasoning leniency on the other; those who are indignant at any suggestion to alleviate a criminal's lot, and the humanity-mongers whose maudlin sympathy is unbounded for every scoundrel who gets some little share of his deserts. I am not pleading for heroic measures of any kind either in the one direction or the other. All I ask is that reason and common-sense shall prevail in this matter.

If experienced criminal Judges were appealed to, they would indicate specially certain classes of criminals in regard to whom their wishes and intentions are thwarted by our present methods. Among these there is, first, the hardened offender who is sent to prison in order to protect the

community from his depredations. A sentence of penal servitude must bear some reasonable relation to the prisoner's crime; but if in such cases it were lawful to impose a definite term of penal servitude, to be followed by an indefinite term of detention in what I have called an asylum prison, a Judge could give effect to his desire to protect society without undue severity to the criminal.

This I have already dealt with; and the confirmation of my views contained in Sir Alfred Wills's letter to the *Times* of the 21st of February 1901 makes it unnecessary for me to pursue it. But a similar element obtains in cases of a wholly different kind. There are cases in which a Judge reluctantly passes a sentence of imprisonment because the nature of the crime, or possibly the circumstances of the criminal, are such that he does not feel justified in adopting the merciful course of handing him over to the care of a philanthropist. Now in passing sentence in cases of this character the governing thought in the mind of a humane Judge is not punishment but reformation. The element of punishment cannot be ignored; but it should be regarded not as an end but merely as a means to an end, namely reform. The main object which the Judge has in view in sending such an offender to prison is that he

may be brought under influences fitted to affect his character and change his course of life. And this being so, will any one defend the practice of immuring such a prisoner in one of our modern and approved prison cells? Our aim should be to raise him out of himself and above himself; and the way we go about it is to lodge him in a cell which is specially constructed to turn his thoughts back upon himself, and to set him brooding upon all that is morbid and evil and impure in his nature.

I am prepared to find that others will not share the strong opinion I personally hold upon this general question. But who will be found to justify the incarceration in such cells of innocent persons wrongly accused of crime, or of persons who admittedly are entitled to be looked upon as innocent? I maintain dogmatically that no one should ever be sent to prison in the aimless and unintelligent way in which so many offenders are at present committed. Every committal should be with some definite and justifiable object; whether it be the prisoner's punishment, or his reformation, or merely his detention, or some combination of these. But in the cases here in view the principle I thus contend for is universally accepted. An untried prisoner who is entitled to the presumption of innocence is



locked up for no other purpose than to ensure his presence to answer a pending charge, and possibly to prevent his taking any action which would prejudice the result. This last consideration, though often lost sight of, may be of great importance. There are cases, for example, in which bail is refused, not so much to prevent the accused from absconding, as to prevent his dealing with the property involved in the charge. And in such cases the main purpose of the commitment would be thwarted if the prisoner were allowed free intercourse with his friends. But this only lends emphasis to the general principle I contend for, that the purpose of the commitment should govern the treatment of the prisoner, and therefore that in these cases every unnecessary indignity and hardship should be avoided.

Any orthodox treatise on the treatment of criminals should begin by recounting the barbarities of bygone days. Though I am neither a prophet nor the son of a prophet, I predict that the time will come when the writers of such treatises will score a point by describing the prison cells in use in England at the beginning of the twentieth century. It is by no means certain that a more enlightened age than ours may not return to capital punishment for crimes of a certain sort, in respect of which it is now

discarded. I commit myself to no prophecy on that score. But I am confident that, in the prison of the future, cells like those in vogue to-day will be used only as "punishment cells." One of the horrors of war in ancient times was the practice of putting out a prisoner's eyes. Our method of shutting out from a prisoner the external world is not so barbarous; but the difference is only one of degree.

Some who will read these pages know nothing of the structure of a gaol. When next they find themselves upon a Calais steamer, let them glance up at the prison on Dover Cliffs, and realise that all those rows of cells are so designed as to prevent their inmates from seeing the English Channel. If this were entirely on a par with depriving them of beer and tobacco—if it had no hardening effect, and if Nature had no voice, no message for the human heart—then it might be entirely justifiable and right. There may be gaols, moreover, where no outlook could be given that might not be deemed unsuitable. But this is a purely incidental difficulty. Here in Dover Prison, if the cells on the southern side were fitted with windows extending from wall to wall and from floor to ceiling, the prisoner could look on nothing but sea and sky, and, in Nature's brighter moods, the far-off coast of France. And

the prospect might well make him pine for liberty with moistened eyes, instead of with clenched teeth and knitted brow.

Just as the leaders of the Reformation in Germany and England were unconsciously under the spell of the very superstitions they condemned, and against which they revolted, so the minds of the enlightened men who built our modern prisons were warped by the traditions of other days. It behoves us to shake ourselves free from those traditions, and to prepare the way for wise and liberal reforms in prison construction and in the treatment of our prisoners. Such reforms will certainly come. It would be easy to promote an agitation on their behalf by sensational appeals to sentiment. But the appeal I wish to make is addressed not to the sympathies of philanthropists of the hysterical order, but to the judgment of thoughtful and sober-minded men.

## CHAPTER X

IN view of the preceding chapter it may be well once again to remind the reader that this volume relates mainly to crimes against property. Offences against the person are a class apart. And when our Judges declare that the mass of crime is due to drink, it is offences of this class that they have chiefly in view. A sober Englishman will scarcely take his hands out of his pockets under provocation such as, with other races, would lead to a fatal brawl. But given a certain amount of drink, the phlegmatic Saxon becomes quarrelsome and violent. And while, under the pressure of poverty due to misfortune, our working classes display the virtues of honesty and patience, poverty which is the outcome of vicious indulgence corrupts and degrades. And therefore it is that drinking, gambling, and betting lead to theft and fraud. Indeed, gambling in its many phases is becoming as great a plague as it was before the passing of the Lottery Acts.

Offences against property may be grouped in

three categories: the deliberate and premeditated crimes of professionals—men “who make crime the business of their lives”; chance crimes, due to special circumstances, whether of unusual temptation or of pressing need; and lastly, the crimes of degenerates. Everybody can appreciate these distinctions, albeit our criminal law ignores them. People of this generation need to be reminded that, until a comparatively recent period, felony was punishable with death. And the principle underlying that uniformity of sentence still prevails. The punishment-of-crime system still holds sway. The law makes no provision for any inquiry into the character and circumstances of the culprit; nor even as to his antecedents, save as they may be disclosed in his official *dossier* of previous convictions. It is true, no doubt, as already noticed, that some Police Forces do engage in such inquiries, and that our best Judges usually seek in an informal way to profit by them. But the law lends no sanction to this.

The day before yesterday “all people of discernment” were certain that the criminal code of the Jewish Theocracy originated centuries later than the Mosaic era. Yesterday, however, the explorer brought to light the laws of Hammurabi, of centuries earlier than that era;

and so, to-day, the critics are no less certain that the Jewish ordinances were an adaptation of that now famous code. And as this change of view has dispelled the ignorant prejudice formerly excited by any reference to the law of the Theocracy, I may here appeal to it as furnishing a precedent for the reforms I advocate. I am not talking wildly when I say that if the leading principles which marked the Mosaic law were introduced into our criminal code, the reform would go far to make offences against property as rare in England generally as they are now happily rare in the rural districts of our land.

First of all, a judicial inquiry dealt with the offender rather than the offence. This led to observing a clear distinction between deliberate crimes and "chance" crimes. For offences in this second category there was no stint of mercy; but a wilful and deliberate violation of the law received stern and drastic punishment. The case of the Sabbath-breaker, recorded in the fifteenth chapter of Numbers, is intended, as the context shows, to illustrate and enforce this distinction. There was no suggestion of ignorance or misadventure. "Sins of ignorance" were treated very leniently; and as regards offences through misadventure, even the homicide had "a city of refuge." But here was a case of one who broke

the law, as it were, "on principle." With full knowledge and deliberate purpose he went out openly and ostentatiously to gather firewood, and carried it back to the camp in the presence of all the people. The man was a typical anarchist. His offence was of the wilful kind that cuts at the root of all law, and tends to make civilised society impossible. To gather sticks is in itself a grotesquely trifling business. Still more ludicrously trifling is it to wear a white rose, or a red rose, in one's buttonhole. But when the act, or the choice of a flower, has behind it the deliberate intention of trying conclusions with the State, its seeming insignificance disappears.

The enlightened code of the Theocracy was administered on the intelligible principle that laws are made to be obeyed. While therefore the weak, and the ignorant offender, escaped at the cost usually of making reparation to any who had suffered by his wrongful act, the intentional law-breaker, whose crime was committed deliberately and with no circumstances of palliation, was given up to stern and inflexible justice. For under that rational and humane code the offence *per se* was deemed of less account than its moral character, and its consequences to others.

And this brings up the second principle to which I wish to call attention. While our punishment-

of-crime system ignores the victim of a crime, restitution and compensation were paramount considerations under the Mosaic law. In the case of a wealthy criminal like John Carr, for example, though his wealth is known to be the proceeds of his crimes, the unfortunate citizens whom he robs or defrauds are compelled, sometimes even at a further pecuniary sacrifice, to assist in bringing him to justice, but no question of compensation for their losses is entertained. For the fiction of law obtains that his offences are acts done *against the Crown*. During his enforced seclusion, moreover, the Home Office appoints a high Government official to take care of his property ; and if that duty be neglected, the rascal can appeal for redress, not only to the Secretary of State, but to a Law Court. In a word, the interests of the criminal are safeguarded with scrupulous care, whereas the interests of the victims of his crimes are altogether ignored.

If in the case of a criminal of this type the law ensured that a conviction would put an end to his career, and that his estate would be administered in the interests of all who had suffered by his evil deeds, he would at once abandon the practice of his profession and become "moral by Act of Parliament."

And restitution should be the rule in every



case of wilful crime. The victims of the majority of crimes against property are people who can ill bear such losses; and to the pecuniary loss there is often added great distress of another kind. The common housebreaker, for example, lives chiefly by raiding houses of a humble class. In the absence of the occupants he forces the door and carries off all the petty treasures of the home. So trifling is the money value of the booty that the thief is seldom even questioned as to his disposition of it. Cases that constantly came before me at Scotland Yard, where people were thus robbed of all their petty valuables—wedding presents, and “keepsake” articles hallowed by the memory of parents and friends—would have tempted me to use thumbscrews to compel disclosure with a view to their recovery. But my proposal here is that in every instance restitution or compensation should be enforced. For, failing restitution, the criminal should be kept in prison until the victim had received full and liberal compensation. “The cost of his keep” would be a first charge upon his work, but subject to that charge the estimated value of his labour should be devoted to satisfying the claims of his victims.

That this scheme would operate as a powerful deterrent, no student of human nature will question. If a professional thief knew that

stealing my spoons would involve his remaining at hard labour until their value had been paid to me, he would let my spoons alone. And this punishment would really "fit his sin"—a phrase which, under our present system, is quite unmeaning. It would prove an effectual check upon deliberate and premeditated crimes against property. And if accompanied by permanent detention, in every case where the offence gives proof that the offender is an outlaw, it would avail, I again repeat, to put an end to professional crime altogether.

In its inception any scheme of this kind must involve a good deal of labour and care. But the difficulties would be trifling in comparison with those which, a generation ago, beset the introduction of sanitary reforms. For a year or two it might cast a serious burden upon the Police and the Criminal Courts. But before long it would work far more automatically than the laws relating to Public Health; and both the Police and the Courts would have easier times than they have ever known. I can vouch for it, moreover, that no duty that falls upon the Police is undertaken more cheerfully than that of assisting the victims of crime.

The scheme would be practicable from the point of view of Police work; and if I assert

the same respecting Prison administration, I rely not merely on personal knowledge, but on the judgment of experts whom I have consulted. Indeed I have been urged by some to advocate the extension of this proposal so as to include making a prisoner's labour available also to support his family; and if I refrain from doing so, save in a passing way, it is only because I do not wish to travel so far from my main subject.

The difficulty of finding suitable and remunerative employment for the prison population depends mainly on the short sentence system. It is sometimes desirable, and even necessary, to send an offender to gaol for a few weeks. But no one should be sent to prison at all whose case can be adequately dealt with in some other way. Nor should any one ever be committed save with some definite object and purpose. And if the reformation of the culprit be even incidentally in view, the allotted term should be of reasonable duration. In the great majority of cases a short sentence does only harm. If the offender has a family dependent on him, it too often leads to breaking up his home. A more useful and merciful alternative would be to impose a longer sentence, and to allow him by his industry to keep his home together during his imprisonment. The effect of "the marks system," albeit

its benefits are deferred, is altogether good. Vastly better and more elevating would be the influence of the scheme here proposed. "Absence makes the heart grow fonder," and not a few, even of seemingly hardened criminals, give proof of real fondness for wife and bairns. And such men would work with a will if they knew that, week by week, a share of their estimated earnings reached their homes. Such payments would, of course, be made through the Aid Societies, or other philanthropic agencies recognised by the Prison Department. Prisoners would thus be kept in touch with their families during imprisonment, and they could look forward to rejoining them on release, instead of, as too often at present, having to search for them on the streets or in the workhouse.

In this world the innocent sometimes suffer more than the guilty. And one of the evils of our punishment-of-crime system is that it does nothing to counteract this defect of human justice. Though private philanthropy does much to alleviate its effects, the law callously ignores them. The mass of short sentence prisoners are an expense to the State, and their families too often become a charge upon the rates; whereas sensible reforms would not only make our Prisons self-supporting, but would require the inmates to

contribute to the support of those who are dependent on them. There are cases, no doubt, where this would be impracticable, but exceptional cases are no bar to general reforms.

This, however, is a digression. I return to my thesis that as a rule restitution or compensation should be enforced in every case.<sup>1</sup> My personal story, given in a preceding chapter,<sup>2</sup> may serve to illustrate how this would work. Of the two thieves who raided my house on that occasion, the one not only kept a note of every pawnbroker whom he had visited in pledging my things, but he also tried to track his impenitent accomplice when out on the same errand. And what induced him to take this action was avowedly the belief that, if caught, his helping the police to recover the property would obtain for him a mitigation of sentence.

The scheme I advocate would generally operate in this way. There is no comradeship between a thief and his "fence." The receiver always drives a hard bargain, and takes every advantage of him. And if the criminal refuses to betray him, it is because his help is essential to enable him to follow the calling which he

<sup>1</sup> It is monstrous that the law should ignore injuries inflicted on the victims of offences against the person. But here I am dealing only with crimes against property.

<sup>2</sup> Page 53, *ante*.

intends to resume the moment he regains his liberty. But if imprisonment for life were the ordinary fate of an impenitent thief, the criminal would generally develop a statutory penitence at the moment of his arrest; receivers of stolen property would be brought to justice, and the present organisation of crime, which owes its success entirely to the methods I here assail, would be broken up under the influence of general distrust.

Will any one attempt to defend those methods? A really penitent thief is sometimes worthy of more consideration than the punishment-of-crime system usually allows. But the impenitent thief deserves no mercy; and if he should be permitted to escape his full deserts, it is because the infliction of them might work harm to others. The vital question for consideration in disposing of him ought to be, not what he has done, but what, if again set at liberty, he would do. In certain circumstances the State may legitimately condone a past offence; but to turn a dangerous outlaw loose upon the community is an unjustifiable outrage.

If a solicitor who, in the practice of his profession, gets possession of my family papers, disregards the order of a competent court to disclose what he has done with them, obedience

is enforced by imprisonment indefinitely prolonged. But a burglar who, in the practice of *his* profession, gets hold of my family plate, may refuse information with impunity. The offence is deemed to be committed against the Crown; and while the law compels me, at some cost of time and, it may be, of money, to prosecute the culprit, it entirely ignores my right to restitution.

If on pain of indefinitely prolonged detention in gaol, every thief were required to disclose what he had done with his booty, the professional thief would soon disappear, and the trade of the receiver of stolen property would be destroyed. And if only we could get rid of professional crime, remedial legislation and philanthropic effort would have clear scope for dealing with the general crime problem of the nation.

Our first care should be to bring the law into line with the facts. Let it be recognised that we have to cope with criminals who follow crime as their ordinary calling, the serious business of their lives. When such a person is caught and committed to prison under sentence, to turn him loose again upon the community is not only as silly, but as wicked, as it would be to allow people suffering from an infectious disease to mingle

freely with their neighbours. What then should be done with him? Now at present an offender becomes an "habitual criminal" by operation of law, not only without proof that he is such, but, it may be, in spite of facts which disprove it. And this being so, a different term must be used to describe the real "habitual." I call him therefore a *professional* criminal. And my *projet de loi* for dealing with him is as follows:—

If any convict who is registered under section 7 of the Prevention of Crimes Act, 1871, or who is the holder of a license under the Penal Servitude Acts, is convicted on indictment of a crime, he may, before he is called up for sentence, be further charged with being a professional criminal; and the Judge may proceed to an after-verdict inquiry upon that issue.

Notification of the intention to prefer this charge shall be served upon the accused seven days before his trial, and it shall be entered upon the Judge's copy of the calendar in the same way that previous convictions are now entered.

If the charge be found proved, it shall be recorded against the convict, and his name shall be registered as a professional criminal.

If any one who has thus been adjudged to be a professional criminal is again convicted upon indictment of a crime, he shall, at the expira-



tion of any sentence then passed upon him, be further detained in custody during His Majesty's pleasure.

No one should be adjudged a professional criminal save as the result of a judicial inquiry. And a convict's registration in that category, and the consequences of it, should be formally notified to him by the Home Office, and endorsed on any penal servitude license issued to him. But still more strongly do I urge that those consequences should not be made to depend upon a judicial sentence, but upon the convict's conviction of further crime. In this respect and at this stage of a criminal's career we should copy nature. His final loss of liberty should be made to result by operation of law from his own wilful act. As the result of a formal and open judicial inquiry he has been proved to be an outlaw. He has been solemnly warned that, if he again offends, the penalty of outlawry will fall upon him; and yet he has deliberately committed himself. Here is a case of one who either cannot or will not abstain from crime; and, if the law is to fulfil its most elementary duty, he should be deprived of a liberty which he uses only to prey upon society.

## NOTE.

It will be said perhaps that the proposed inquiry to decide whether a criminal habitually lives by crime is open to objection, first on the ground of novelty, and secondly because it would be impracticable. The Prevention of Crimes Act, 1871, affords a complete answer to both objections. So far from there being any element of novelty in it, such an inquiry would be analogous to that which is involved in every case where an "habitual criminal" is now charged under section 7, sub-section (1), of the statute. Under that clause the charge against the accused is "getting his livelihood by dishonest means"; and evidence of the kind necessary to support that charge would suffice to prove that the prisoner is a "professional." As a matter of fact it is sometimes easier to prove that a prisoner habitually lives by crime than to bring home to him by legal evidence the guilt of any of the crimes he is known to have committed.

But, we may be told, though such inquiries are fit work for police magistrates, the Judges of the Superior Courts would decline to undertake them. This is a libel on His Majesty's Judges. No one knows better than the police what time and care the Judges are ready to devote to the investigation of a criminal's character and antecedents. But, as Sir Alfred Wills states (p. 37, *ante*), they are too often ill served in the matter. Under our present system the after-verdict inquiry is often unfair to the prisoner, and it sometimes works positive injustice. It is un-English, even at best. Anything alleged to a prisoner's prejudice should be said openly, and adequate opportunity should be afforded him to meet it.

## CHAPTER XI

WHEN Sir James Stephen made the proposal, adopted in these pages, that the character and antecedents of criminals should be made the subject of "a formal public inquiry held after conviction" for an isolated offence, he was thinking only of the protection of the community against the crimes of professionals. But here I would wish to emphasise that an inquiry of the kind would do more than any Court of Appeal can ever effect to prevent a wrongful conviction, such as that which shocked the public sentiment in the Beck case. Sure I am indeed, that if the creation of the new Court of Criminal Appeal puts an end to the *informal* inquiries now usually held when there are grounds to doubt the justice of a conviction, many an innocent man will in the future be left to serve out his sentence.

How could such a Court have saved Mr. Beck ? It appears to be taken for granted that at the 1896 trial the reception of the excluded evidence would have secured his acquittal. But this assumption is entirely gratuitous. The evidence

in question would have affected the sentence, but it would have afforded no answer to the crime charged. And if the verdict of a jury on issues of fact, based on the unshaken testimony of a number of seemingly honest and credible witnesses, is to be set aside by a bench of Judges, we may as well abolish trial by jury altogether.

At the very time when Mr. Beck's wrongs were creating so much sensation, a case occurred in Ireland which, though of much greater interest and importance for our present purpose, was wholly unnoticed in this country. A Mr. Francis du Bedat, well known in business circles in Dublin—he was formerly President of the Dublin Stock Exchange—was charged with fraudulently obtaining money to finance a scheme for the construction of certain works in South Africa. The accused was brought to trial in August 1903, before Mr. Justice Wright of the Court of King's Bench. It was proved that the Portuguese Government had granted a concession for the works in question, but the official Gazette of that Government was produced to prove that the concession had been cancelled, and that it was non-existent at the very time when Mr. du Bedat was obtaining money on account of it. The case was simple and clear, and the accused was convicted and sentenced to penal servitude.

The matter on which the criminal charge was based then came before Mr. Justice Boyd, another Judge of the King's Bench, sitting in Bankruptcy ; and with the extraordinary result that payments were authorised from the prisoner's estate to further the very scheme in respect of which he had been convicted and sentenced to penal servitude. And the prisoner was discharged, with the full concurrence of the Judge who had sentenced him. There was no suggestion of any misdirection at the trial. No Criminal Court, indeed, could have accepted as legal evidence the proofs which satisfied the Court of Bankruptcy of the prisoner's ignorance of the cancellation of the concession. But a Court of Bankruptcy sets itself to get at the facts, wholly untrammelled by technicalities of any kind. The Court found reason to conclude also that the concession was cancelled on technical grounds, with a view to its revival on more favourable terms. And as a matter of fact it was afterwards revived, and the unfortunate bankrupt was enabled by the help of the Court to secure a valuable interest in it.

If this case had gone to a Court of Appeal for rehearing on the evidence produced at the trial, the prisoner would have been left in penal servitude. But if, after the verdict was given, the

presiding Judge could have held a full and searching inquiry of the kind usual in Bankruptcy proceedings, the accused would never have been sentenced. And no one who studies Mr. Justice Grantham's statement to the Master of the Rolls' Committee in the Beck case can doubt that such an inquiry would have established the innocence of that unfortunate victim of mistaken identity.

The plain fact is that our entire system of law and procedure in a criminal trial is framed in the interests of wrong-doers. And while the new Court of Appeal will enable many a criminal to escape on some technicality, it will do little or nothing for the Becks and Du Bedats of the future. Indeed, the very fact of there being an Appeal Court in existence will probably lessen their chances of escape. I cannot recall any important case in which inquiries entrusted to the Criminal Investigation Department led to the release of persons wrongly convicted of crime, where the result was not due to disclosures of a kind that could not be made evidence in a Court of Law. I may add that it is not the innocent only who would profit by full and searching inquiries of this kind : they would prove a benefit also to the offender whose only lapse is the particular crime charged against him.

In the days when Judges had no discretion in sentencing a felon, it was useless to go behind the evidence. But though the law now allows them the widest discretion, it leaves the procedure unchanged; and a Judge must either act in the dark, or seek information by means which, I again repeat, are always unsatisfactory and often unjust. The present practice, as I have already urged, is unfair, even to the habitual criminal; but it is with the case of the innocent that I am dealing here. In his *Fifty Years of Public Service*, Major Griffiths notices the difference between the bearing of the real criminal and of the victim of a false charge. The one, he says, "knows the worst, and can count the cost; while the innocent, confused and confounded at the charge brought against him, cannot frame words of defence." And this is intensified after conviction, when a prisoner has no longer legal aid. Mr. Beck has declared that the effect of his trial was to reduce him almost to the condition of an imbecile; and what happened to him may happen to others.

The practice, moreover, of trying an accused person twice over, first before a magistrate, and then in a higher court, may work grievous injustice in a case like that of Mr. Beck. Is it likely that no member of the jury who convicted him in 1896 had learned from the Police Court

proceedings that Adolf Beck was the John Smith of a previous conviction? Is it likely that no member of the jury that convicted him in 1904 had read the report of the magisterial inquiry which announced that he had already served a penal servitude sentence for a similar crime? It is highly improbable that out of twelve newspaper readers not one would have noticed such a case as this; and if any one of the twelve had knowledge of it, he would of course communicate the fact to his brother jurors.

This practice of double trial is now so settled that even the lawyers have come to believe that the law requires it. Though in most cases, no doubt, a full magisterial inquiry is desirable, it should be strictly limited to the charge on which the accused has been arrested. Indeed, the present practice outrages the spirit of English justice, which demands that even the worst of criminals shall have a fair trial, unprejudiced by any knowledge of his antecedents.<sup>1</sup>

<sup>1</sup> In a case of exceptional gravity at the Irish State trials of forty years ago, the prisoner was tried and convicted on a charge in respect of which no evidence whatever was offered in the magistrate's court. There is nothing in our law to prevent this; and in the instance in question it operated in the prisoner's favour. I had the conduct of the case as Counsel for the Crown in the Court below; and in refusing to go into the charge on which, as the magistrate knew, the prisoner was to be indicted, I was acting under the instructions of the Attorney-General.



For while the jury are supposed to be ignorant of the prisoner's identity with that notorious burglar "Bill Sykes," the hero of a dozen previous crimes, as a matter of fact his identity and career were disclosed at the Police Court the other day, and published with sensational headlines in all the halfpenny newspapers.<sup>1</sup>

And now, to return to my main thesis, I ask, Can any reasonable objection be urged against the scheme suggested in these pages for dealing with professional criminals? None has hitherto been offered. Indeed, the only opposition to it has come from the professional humanitarians. The anarchists believe in neither God nor Government; and, in this sphere at least, the humanitarians share their unbelief. For their hostility to every proposal that criminal outlaws should be kept out of the way of injuring their neighbours, assumes that a prisoner in a British gaol is beyond the reach of mercy either human or Divine. But even a penal servitude convict is now kept in touch with the outer world by our system of independent prison visitors; and in an asylum prison much greater latitude would naturally be allowed in this respect. And if new circumstances, or genuine

<sup>1</sup> Under the reforms I advocate, every statement of the kind to a prisoner's prejudice would be suppressed till after conviction, but formal notice would be served upon him that, at that stage, it would be used as the basis of a further charge against him.

moral reformation, seemed to warrant a prisoner's release, he could at any time be restored to liberty.

Having been for so many years behind the scenes at the Home Office, I can testify that any plea of the kind on a prisoner's behalf is usually considered with sympathy and care. As a quarter of a century has elapsed since the following case occurred, I may tell it now without harm to any one. A noted forger, just out on license, set himself to procure the release of his "pal" who had still some years to serve, and whose help he wanted in "returning to business." For a few shillings a week he rented a wayside cottage in a midland county, christened it something or other Hall, and from this address he wrote a "Dear Sir" to the Secretary of State. The writer posed as a country gentleman who had long known the convict's family, and long grieved over his fall. But though the poor fellow had had much against him in early life, he had now, by the death of a relative in Australia, succeeded to a substantial fortune, and he felt certain that, if he were released, the authorities would have no cause to regret their leniency. The bait took, the plot succeeded, and the convict was promptly released on license.

It was in the course of my Secret Service

work that I discovered the fraud thus perpetrated upon the Home Office. A woman who had a son in penal servitude came to me to give warning of what she believed to be a dynamite plot, for just then people had dynamite on the brain. The forgers had used her son as a medium of communication, and he had given her the particulars which enabled me to ascertain the facts above recorded. Her mention of her son was purely incidental, but it interested me, and I made her tell me his story and her own. She and her husband were old servants of a type that is now unfortunately rare; they had served together for nearly thirty years in the same household. Her son who, she declared, was a good lad, had been sentenced to ten years' penal servitude and "the cat" on a charge of highway robbery. I investigated the case. It belonged to the bad era which preceded the creation of the Criminal Investigation Department, and the officer who made the arrest was a man I distrusted. The "highway robbery" was merely a scuffle between some men who had been drinking together in a public-house. And the accused was a boy in his teens, with no criminal antecedents. The sentence was a monstrous one even if he was guilty, but I came to the conclusion that it was a case of mistaken identity.

The heads of the Criminal Department at the Home Office, however, refused to listen to me. I wasted a forenoon trying to influence them. But happening to be at 7 Grafton Street a few hours later, I told my story to Sir William Harcourt, and he called for the convict's papers and ordered his immediate discharge.

But even if people have no confidence in Home Office mercy they might surely have some trust in Divine grace. Benhadad, King of Syria, was persuaded that the God of the Israelites had no power in the valleys, and the humanitarians seem to assume that Omnipotence is powerless in a prison. But if a prison were what it ought to be, a criminal might, while within its walls, be brought "nearer the kingdom" than while given up to a life of dissipation and crime out of doors.

This is a delicate subject to deal with in a book of this character. Some of us believe that God could feed a penal servitude convict, as He once fed a prophet in Israel, by the agency of the birds of the air. But we should all agree that this in no way affects the commissariat duties of the prison authorities. And some of us would hold that a like remark applies to the undoubted fact of Divine power to bring a prisoner to repentance.

Moreover, it is not the fault of a prison chaplain if some of the very prisoners who most need his ministrations regard him much as Mahometans regard a Christian missionary. A mass of prejudice clouds their minds and closes their hearts against him. During my connection with the Prison Department it was my privilege to make the acquaintance of gaol chaplains whose devotion to their work in seeking to lead prisoners to a better life won my respect and admiration. But the system of conferring on any chaplain the powers of a sort of religious gamekeeper is indefensible in a Protestant country. The State has the right to punish criminals in whatever way the good of the community requires. But if the State elects to imprison them, it has clearly no right to starve either their bodies or their souls. The very fact of shutting them up creates the duty of providing them with suitable sustenance for every part of our complex being. But while the bodily condition of a prisoner receives careful attention, and if his health fail on account of the prison fare, the infirmary will provide him with a special diet, the far more subtle and important problem of his spiritual idiosyncrasies is ignored. We have made some advance on the methods of a generation ago, when a convict

was flogged for refusing to accept any one of the "religions" provided by the Prison Department.<sup>1</sup> But the provision made for the spiritual health of prisoners is still marked by a cast-iron rigidity that would not be tolerated in the physical sphere.

We have something to learn from America in the matter of prison administration. One Sunday, forty years ago, a converted prize-fighter, known to the scum of New York as "Awful Gardner," was put up to preach to the convicts in Sing Sing Prison. Among them was an Irish prisoner, Jerry McAuley by name, who had been emigrated to New York at thirteen years of age, and placed under the care of his grandmother. He soon got out of hand and went to the bad. His record may be judged by the fact that while still a lad in his teens he was sentenced to fifteen years' penal servitude. "Awful Gardner" was an acquaintance of his. To use his own terse words, he knew him as "an all-round ruffian." The service made a profound impression on him, and became the turning-point of his life. Indeed

<sup>1</sup> This befell one of the Irish Fenian convicts, O'Leary by name—not the editor of *The Irish People*. "Pagan" O'Leary, his associates dubbed him, for he was a notorious priest hater. When called upon to declare his religion in the convict prison, he insisted that he had none. The result was a flogging; and the flogging resulted in his discovering that he was a Roman Catholic.

it led to a religious movement in the prison. The authorities gave free access to city missionaries to continue the good work, and Bible classes were formed among the convicts. So unmistakable was the change in Jerry McAuley that the Governor of the State granted him a pardon.

Between a prison cell and a free life of honest labour there lies a gulf, and it was left unbridged when poor McAuley was released from Sing Sing. It was not strange, therefore, that a man with such antecedents soon fell under the influence of old habits and former companions. But after several bad lapses, a city missionary got hold of him, and he was at last set upon his feet. He decided to devote his life to the rescue of others of his own class, and the records of his mission in one of the worst streets of New York have few parallels in the story of philanthropic and Christian effort. McAuley is long since dead, but the work he originated is still carried on by men who at one time seemed to be, like him, hopeless drunkards and hardened criminals, but who were reclaimed by his influence—indirectly a result of "Awful Gardner's" preaching in Sing Sing prison.<sup>1</sup>

<sup>1</sup> The story of the McAuley mission was written by his successor, S. H. Hadley, under the title *Down in Water Street*. Hadley was one of the many whom McAuley rescued from a life

Without reserve, I maintain that no criminal is irreclaimable, and I earnestly plead for reforms in prison administration that will make reclamation as common as it is now unhappily rare. But considerations of this kind only lend increased weight to my demand for reforms in another sphere. They afford no excuse for a system which leaves the community a prey to the depredations of professional criminals. The question here is a practical one. It is not whether an offender is to be regarded as irreclaimable from the standpoint of the Christian philanthropist, but whether a criminal court may not be justified in holding him to be, in a legal sense, incorrigible. If, as the result of a fair public inquiry, he is proved to have deliberately and persistently followed a career of crime, let him be dealt with as reason and justice demand. And let mercy show itself, not in turning impenitent criminals loose upon society, but in bringing them under influences calculated to fit them for a return to liberty in later years, or at all events to prepare them for the life to come.

In conclusion, I will only add that the of vice and crime. He too is now dead, but the mission goes on. My statements about it have been penned only after reference to well-known public men whose testimony to their truth is based on personal knowledge.



changes advocated in these pages are entirely in the direction toward which the thoughts of all who are best fitted to deal with problems of the kind are turning. Indeed, they are but a further development of the principles which underlie modern penal legislation and recent prison reforms. And in one important respect they would merely give legal sanction to what our best Judges and our humane prison authorities are now seeking to effect. Moreover, they are certainly coming. And when they come their beneficial results will at once declare themselves; the diminution of crime will then be rapid and continuous like the fall of an ebbing tide.

## APPENDIX NOTE

As the hostile criticisms to which my *Nineteenth Century* article of February 1901 gave rise may possibly be reproduced when this book appears, it may be well to notice them. But I dismiss the matter thus to an appendix note.

The officials of the "Humanitarian League" and the "Romilly Society" relieved their feelings by abusing me and misrepresenting my words. No one takes any notice nowadays of the "Humanitarian League"; but as the "Romilly Society" still boasts the patronage of a few distinguished names, I quote the following sentences from their Annual Report of 1901:—

"Some stern thinkers denounce sympathy with outcasts as sentimentality to be repressed and scoffed at, and one of their number, Dr. Anderson, late Assistant Commissioner of the Metropolitan Police, and Chief of the Criminal Investigation Department, has with ingenuity, but doubtful taste, coined a new description for those who differ with him, that of 'humanity-mongers.' . . . He is a type of the hardening process which a man undergoes whose duty is the prosecution only of crime, and who now finds himself in retirement, at liberty, perhaps impelled, to have a last fling at those whose fate he can no longer influence."

Any one who deals hard blows must expect to

be hit back ; and having lashed out at the humanitarians, I was not surprised at their turning upon me. But as the article which provoked these slanders is before the reader of these pages, I leave him to judge between us.

I will seize the occasion, however, to say that the Criminal Investigation Department of the Metropolitan Police is one of the greatest of "Prisoners' Aid Societies." No part of my duties as head of that Department gave me more pleasure than carrying on and developing the good work which my predecessors had inaugurated in this sphere. Following their practice, I kept a list, revised every year, of employers of labour who were willing to give work to criminals on their release. There was no deception or concealment in the matter. The firms who were willing to help me received particulars of a man's antecedents, so that they could avoid employing him in circumstances where he might be tempted again to fall. And I had a fund at my disposal which enabled me to keep a man from want till work was thus found for him. Very many criminals were thus restored to the ranks of labour. Speaking generally, indeed, I would say that, in London at least, such help was never refused to deserving men.

If I write this in the preterite, I do so only because I am dealing with attacks levelled against myself personally. I am assured that the same philanthropic work is still actively carried on at Scotland Yard.

My *Nineteenth Century* article was received with a chorus of approbation by the Press generally ; but there was a jarring note in a quarter where I had every reason to expect warm approval. The *Times* opposed it. The following is an extract from a leading article on the subject which appeared in that paper :—

“ Dr. Anderson's chief proof was derived from the figures as to burglary, house-breaking, and shop-breaking in London. In fifty years they had, it was said, multiplied very many times. Not to speak of the failure to take due account of the growth of population, there was not sufficient reference to changes of circumstances, which made comparisons with early periods in last century worthless. At present our criminals, like our poor, are always with us. They come out of gaol, after a brief absence from their friends, to renew, in all probability, their depredations, and often on their old hunting-grounds. Sentences being much shorter than they were, the offenders are oftener at liberty. The ‘ working days ’ in a criminal's life are greatly multiplied. To ignore the influence of transportation, which every year permanently removed from the country many of the more active criminals, and the effects of short sentences, which enable one criminal now to do the work of two or more, is to take a hasty and superficial view of the problem.”

In charging me with failing to take account of the growth of population, and with ignoring the influence of transportation, the writer gave proof that he had never read my article, but was using

it merely as a peg on which to hang what he wanted to say. His criticisms, in fact, were based on a letter addressed to the *Times* by Dr. Nicolson, then Superintendent of Broadmoor.

But, to criticise his criticisms, it is amazing that the state of things he describes could be thus regarded with serene contentment and satisfaction. Imagine some future generation accounting for the prevalence of small-pox on similar principles. Here is the sort of excuse they might offer for an outbreak of the disease. "At present our small-pox patients are always with us. The inhumanity of other days, now happily past, enforced vaccination and the isolation of the sick. But now the sick are allowed out of hospital, after a brief absence from their friends, and during the infectious stage. Of course, therefore, small-pox cases are more numerous than they used to be. But these facts must not be used as arguments in favour of a reactionary policy, for the statistics clearly prove that the general health of the community is better than in the days of our fathers."

The writer went on to say:—

"Nothing was said of a reclassification temporarily adopted in 1877, and the entering of as burglaries what had been previously classified as larcenies; a rearrangement which, in part at least, explained the sudden rise of the figures from 461 in 1876 to 1253 in 1877."

What are the facts? It is true that in 1877

there was, as stated in the Commissioner's Annual Report for that year, "a nominal increase under the head of burglary and house-breaking," due to the reclassification in question. But it is no less true that an extraordinary epidemic of crime of this character in 1877 was one of the incidental causes which led to the formation of the Criminal Investigation Department. To quote the Commissioner's Report again:—

"The year was marked by the prevalence, for a time, of robberies of various kinds, partly accounted for by the depression of trade, and partly the result of the depredations committed by a limited number of thieves, who confined their operations mostly to houses left empty and unattended. Out of 1253 cases of burglary, house-breaking, and breaking into shops and warehouses, no less than 839 were houses empty or with no person in charge; 203 of these occurred in the Islington division."

While at Scotland Yard I found that burglaries in unoccupied houses average only about 16 a year—quite a negligible quantity. House-breakings, however, are much more numerous. But this in no way affects my argument. In 1877, the year of the new classification of crimes (the change was not a temporary one, as the *Times* supposes), the burglaries, house-breakings, and shop-breakings combined numbered 1253. In 1899 they had increased to 2443—that is to say, they had almost doubled. And yet the total number of felonies relating to property fell

from 20,281 in the former year to 16,149 in the latter. If the offences against property had increased in the same ratio as the population of the metropolis, the number in 1899 would have been 30,172 instead of 16,149; and if the felonies in the three categories above specified had decreased in the same ratio as the other offences relating to property the number in 1899 would have been 997 instead of 2443.

As already intimated I had reason to expect cordial support from the *Times*. For when I first wrote upon this subject (see p. 42, *ante*), that paper endorsed my scheme unreservedly. An article which appeared in its columns on the 3rd January 1891 gives such an admirable statement of my views that I take the liberty of reproducing it here. After noticing the "remarkable decrease in the amount of crime," upon which, then as now, I in part based my arguments, the article in question goes on to say:—

"But the rate of decrease is slow, and we make little impression upon the standing army of crime, the men who habitually break the law, just as others habitually keep it, who are the victims of no sudden temptation, but who carry on a systematic warfare against society, and to whom a life of vice and crime, notwithstanding all its risks, is fascinating. We imprison them again and again, but to no purpose. They continue to tread the same round—enter our gaols in due time, quit them after a period, long or short, re-enter them, quit them again, and so on while life lasts, leaving behind them progeny which will pursue the same course of alternate seclusion and ill-spent liberty. The time was when the highest duty of the

philanthropist was to be the advocate of leniency—to seek to eradicate from criminal law the idea of vengeance, to labour for the reform of a brutal criminal law, and to make prisons no longer habitations of cruelty and schools of advanced, finished wickedness. We shall not be going back, we shall be advancing along the same path, if we recognise that if we are not to be cruel to the weak, unjust to society, we must not be mealy-mouthed in regard to certain criminals, especially the hardened offender, who, as Dr. Anderson says is ‘as really a professional man as the doctor or the engineer,’ whose training is special, who is ‘a real enthusiast at his business,’ and who ‘has a thirst for adventure’ and ‘a soul above working for his living.’ The inveterate criminal, the head centre and parent of many of his kind, is as real a personage as the man who, by stress of circumstances and against his better instincts, slides into crime. ‘After a somewhat varied and not very brief experience,’ Dr. Anderson declares, ‘I am as certain as any one can be in regard to a question of this character, that organised and systematic crime might be stamped out in a single generation.’ But how is this beneficent result to be accomplished? By a frank recognition of certain plain truths; not by spurious pity, or by clinging to the ineffective system which sells to the hardened, hoary offender, in consideration of so much incarceration, a licence to begin again his old course of depredation and violence, but by acting upon the principles long ago enunciated by pioneers in criminal reform, such as Mr. Frederick Hill, and now solemnly enunciated by Dr. Anderson. ‘The weakness now shown to hardened and inveterate criminals tends to encourage crime and to bring the



administration of the criminal law into contempt. When a man who boasts of having committed a hundred crimes escapes with a sentence which turns him loose on society after a few months' or years imprisonment, is not the whole proceeding an utter farce?'"

THE END

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